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Supreme Court of the United States

OCTOBER TERM, 1984

In Re MOBIL OIL CORPORATION,
ATLANTIC RICHFIELD COMPANY,
GULF OIL CORPORATION,
PHILLIPS PETROLEUM COMPANY,
SHELL OIL COMPANY
and TEXACO INC.,

Petitioners.

PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

An ultimate question presented is whether defendants, petitioners herein, are entitled to effective appeal of a district court's order to disclose to the general public confidential, pretrial material produced under compulsory process. Meaningful appeal of that ruling, which significantly expands the scope of public access in private civil litigation, had been secured by the District Court's entry of a stay pending appeal. The immediate questions itemized below arise from separate appeals of the stay pending appeal taken by a newspaper claiming constitutional rights of public access and disclosure. Defendants-petitioners have been deprived of due process rights to be heard on the appeal of the stay by the Court of Appeals' disregard for the Federal Rules of Appellate Procedure promulgated by this Court.

1. Whether a final judgment by a Court of Appeals on a petition for an extraordinary writ is subject to Federal Rules of Appellate Procedure 41(a), thereby protecting further appeals by a stay of the mandate upon the timely filing of a petition for rehearing.

2. Whether a Court of Appeals may grant a petition for a writ of mandamus *ex parte*, and deny respondents an opportunity to answer said petition pursuant to appellate Rule 21(b).

3. Whether a Court of Appeals may grant a petition for a writ of mandamus *ex parte*, arbitrarily denying oral argument in violation of appellate Rule 34(a).

4. Whether the power of mandamus is available to overturn a District Court's discretionary decision to enter a stay pending appeal.

PARTIES IN THE NINTH CIRCUIT

The petitioner in the Ninth Circuit mandamus docket, No. 84-7262, was Dow Jones & Co. Inc. The respondents included: Atlantic Richfield Company, Exxon Corporation, Gulf Oil Corporation, Mobil Oil Corporation, Phillips Petroleum Company, Shell Oil Company, Standard Oil Company of California, Texaco Inc., the State of Arizona, the State of California, the State of Florida, the State of Oregon, the State of Washington and the City of Long Beach, California. The United States District Court for the Central District of California, Honorable William P. Gray, was a nominal party.

Although not parties below, this petition makes the United States Court of Appeals for the Ninth Circuit, Circuit Judges Schroeder, Alarcon and Ferguson, nominal parties herein against whom relief is requested.

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PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners respectfully pray that a writ of mandamus issue to the United States Court of Appeals for the Ninth Circuit directing it (1) to vacate its final judgment of June 19, 1984, granting a petition for mandamus *ex parte* and in violation of appellate Rules 21(b) and 34(a), (2) to recall the mandate of said *ex parte* judgment as issued improvidently and in violation of Rule 41, and (3) to grant a timely-filed petition for rehearing of said *ex parte* judgment. In the alternative, petitioners respectfully request a writ directing the Court of Appeals to maintain a stay of document disclosure pending the appeal of an important District Court decision approving public access to sealed civil pretrial material.

The District Court decision whose appeal this petition seeks to protect raises questions of first impression involving the application of common law and First Amendment rights to the pretrial phase of civil litigation, and the corollary scope of protective orders. In addition, certain issues involving administration of the Federal Rules of Appellate Procedure raised in this petition have not previously been addressed by any federal court. One question—whether appellate Rule 41(a) applies to proceedings for extraordinary writs—needs to be addressed by this Court in order to resolve a clear conflict between the Ninth and Second Circuits and to achieve consistent administration of justice.

THE OPINIONS BELOW

The Order of a panel of the United States Court of Appeals for the Ninth Circuit, Schroeder, Alarcon and Ferguson, J.J., No. 84-7262, June 19, 1984, is in APPENDIX A. The appendices also include the Opinion and Order to disclose confidential material, and stay of said disclosure pending appeal, of the United States District Court for the Central District of California, Multi-

district Litigation Docket 150-WPG, entered April 12, 1984, part of which was on appeal in Ninth Circuit No. 84-7262 (reviewing only the stay pending appeal) and is on appeal in 84-5878 (reviewing the disclosure ruling). APPENDIX B. An order of the District Court, MDL 150-WPG, September 6, 1984, implementing the Court of Appeals' June 19 Order, is APPENDIX C. Three related orders not directly sought to be reviewed are in APPENDICES D-F.

JURISDICTION

This Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a), to confine the United States Court of Appeals to a lawful exercise of its prescribed jurisdiction and thereby preserve both the appellate jurisdiction of said Court of Appeals and the prospective appellate jurisdiction of this Court over important questions. *Ex Parte Peru*, 318 U.S. 578, 582-83 (1943); *Ex Parte United States*, 287 U.S. 241, 246 (1932); *McClellan v. Carland*, 217 U.S. 268 (1910). In addition, this Court has jurisdiction under 28 U.S.C. § 1651(a) to exercise general supervisory control over inferior federal courts. *Will v. United States*, 389 U.S. 90, 107 (1967) (writ of mandamus "serves a vital and didactic function"); *Schlagenhauf v. Holder*, 379 U.S. 104 (1964); *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957). Exercise of this Court's supervisory authority is particularly appropriate where, as here, there is a pattern of disregard of appellate rules essential to preservation of due process. This pattern raises "basic, undecided question[s]" whose resolution can "settle new and important problems" involving the administration of justice within the federal courts. *Schlagenhauf v. Holder*, 379 U.S. at 110-11. Exercise of jurisdiction under 28 U.S.C. § 1651(a) also is appropriate to prevent the Court of Appeals from proceeding contrary to the analysis of the recent decision of this Court in *Seattle Times Co. v. Rhinehart*, 104 S. Ct. 2199 (1984). *See Erie Bank v. United States District Court*, 362 F.2d 539 (10th Cir. 1966).

STATUTORY PROVISIONS INVOLVED

This case directly concerns exercise of authority by the Court of Appeals under the All Writs Act, 28 U.S.C. § 1651(a), and non-compliance with Rules 21(b), 34(a) and 41(a) of the Federal Rules of Appellate Procedure. These provisions are set forth in the Statutory Appendix, along with related Appellate Rules 40, 45(c) and 47, 28 U.S.C. §§ 2071, 2077, and Rules 3(a)-(b) and 22 of the Rules of the United States Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE

Summary of Proceedings In The District Court

This petition arises from Multidistrict Litigation Docket ("MDL") 150, encompassing six private antitrust actions consolidated for pretrial in the Central District of California, before The Honorable William P. Gray, pursuant to 28 U.S.C. § 1407.[1] Defendants, also petitioners herein, refine crude oil and market petroleum products. Plaintiffs are five states—Arizona, California, Florida, Oregon and Washington—and the City of Long Beach, California, each suing as a purchaser of petroleum products or as a seller of crude oil, alleging nationwide conspiracies affecting prices. Plaintiff-intervenor Dow Jones & Company, Inc. ("Dow Jones") publishes The Wall Street Journal. None of the cases is yet scheduled for trial.

Plaintiffs' broad discovery requests have been accommodated efficiently only through entry of an agreed-upon umbrella protective order, pursuant to FED. R. CIV. P. 26(c). By this device, commonly used in complex civil litigation, time-consuming evaluation of private files for

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[1] *In re Petroleum Products Antitrust Litigation*, 419 F. Supp. 712 (J.P.M.L. 1976), and 393 F. Supp. 1091 (J.P.M.L. 1975). Petitioners, who are defendants in the District Court and appellants (No. 84-5878) or respondents (No. 84-7262) in the Ninth Circuit, are more fully identified in the Appendix of Affiliated Corporations.

specific confidentiality and item-by-item judicial resolution of disputes are avoided, or at least deferred, by permitting the producing party initially to designate materials as "confidential." Designated material may be disclosed only to persons working directly on the cases, thus prohibiting disclosure prior to trial to the public or to the business personnel of competitors named as co-defendants. Designated information filed with the court must be submitted under seal.[2] Since its entry in 1977, parties and third parties have acted in reliance on this protective order.[3]

This controversy arose when Dow Jones intervened in one case seeking access to all protected discovery. The newspaper claimed no special right of access as a member of the press but sued as a member of the public, asserting that pretrial discovery was presumptively open to the public under the First Amendment and the common law tradition of public trials.[4] Dow Jones' request was

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[2] The MDL 150 Protective Order specifies procedures by which any party may challenge a designation and seek declassification of specifically identified material. It is not an impediment to introducing evidence at a public trial and its does not restrict use or dissemination of the same information, if obtained from a source independent of discovery. *See Seattle Times Co. v. Rhinehart,* 104 S. Ct. 2199 (1984).

[3] In reliance on the protective order, defendants-petitioners and third parties have produced millions of pages of documents and submitted to over 500 depositions, without pressing legitimate objections to intrusive discovery requests; the parties have settled two cases and former defendants have settled out of pending cases; sealed briefs and attachments have been submitted to the District Court.

The body of material filed under seal is the focus of the present disclosure controversy. The MDL 150 proceeding, however, is conducted mainly in public. As of September, 1983, approximately 115 out of 3,875 filings with the District Court had been submitted under seal. Approximately 250 written orders have been issued in MDL 150, all public, many published, and some pursued on appeals. All hearings—more than 120—have been public.

[4] The District Court initially treated Dow Jones' request as premature and deferred final action. Dow Jones twice petitioned the

granted in a decision dated February 9, 1984, that was finalized by order entered April 12, 1984. APP. B.[5]

The District Court Opinion and Order directed disclosure of confidential, sealed materials filed at the courthouse, even though they had not been and might never be subject to trial or dispositive judicial ruling. Thus, it expanded the scope of access at the direct expense of protection under Rule 26(c), FED. R. CIV. P. The Order automatically defers actual disclosure for seventy days, giving producing entities an opportunity to identify and withhold from immediate disclosure any items that arguably rebut the strong presumption of access.[6] The Order is self-executing. Defendants-petitioners cannot prevent disclosure at the end of the seventy days by simply retaining the material. Any plaintiff, or the District Court, may then unilaterally release items to the general public.

After separate briefing and argument, the District Court stayed both disclosure and the seventy-day review procedure pending appeal. Order ¶ 6, APP. B-3. It determined that any implementation of its ruling would irreparably harm defendants and moot an appeal. APP. B-25. It described its ruling as "important and con-

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Court of Appeals for a writ of mandamus to compel the District Court to grant its renewed motion (No. 83-7634, 9th Cir., Aug. 17, 1983). That petition was denied once without calling for briefs and, upon renewal, was voluntarily dismissed after issuance of the District Court's decision.

[5] The appealed ruling is in three parts: (1) an Order entered April 12, 1984, ("Order") (APP. B-1); (2) a Memorandum of Decision dated February 9 and incorporated by reference into the Order (the "Opinion") (APP. B-4); and (3) a short Memorandum to Counsel commenting on appeal jurisdiction and entry of the stay pending appeal ("Mem. to Counsel") (APP. B-24).

[6] The District Court limited defendants' and third parties' right to demonstrate interests countervailing public access to trade secrets or actual commercial sensitivity leading to harm to a defendant's competitive position. APP. B-19-21. The opportunity to demonstrate burden, harassment, potential pretrial prejudice, privacy and other recognized countervailing interests was denied, *id.*, and that denial is on appeal.

troversial" and one that should be "authoritatively resolved" on appeal. *Id.* Defendants timely filed a notice of appeal on April 26, 1984, Ninth Cir. No. 84-5878.[7]

Proceedings in The Court Of Appeals

In an apparent attempt to moot defendants' appeal, the newspaper-intervenor attacked the stay in the Ninth Circuit by initiating three separate appeals of the stay.[8] Its petition for a writ of mandamus to vacate the stay, filed April 20, 1984, ER 1-40, was granted, summarily and *ex parte*, on June 19, 1984. APP. A-1. The record then before the panel consisted solely of Dow Jones' one-sided petition, because of the restrictions of Rule 21(b), FED. R. APP. P.[9]

Defendants filed a petition for rehearing, pursuant to FED. R. APP. P. 40(a), on June 26, 1984. ER 61. It included a suggestion for rehearing *en banc* and a petition for permission to file a responsive brief pursuant to Rule 21(b) and for oral argument. Defendants reasonably believed that the effect of the June 19 Order to issue a writ was automatically stayed, pursuant to FED. R. App. P.

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[7] Appeal of the interlocutory order to disclose confidential documents lies under 28 U.S.C. § 1291 and the collateral order rule of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). Mem. to Counsel, APP. B-24-25. *E.g., In re Continental Illinois Securities Litigation*, 732 F.2d 1302, 1307 (7th Cir. 1984) (interlocutory disclosure order "easily met" the *Cohen* test).

[8] Dow Jones' appeal under 28 U.S.C. § 1291 was dismissed for lack of jurisdiction, on defendants' motion, by order of June 19, 1984 (No. 84-5824). APP. D-1. Dow Jones' petition for permissive review under 28 U.S.C. § 1291(b) was denied, after briefing of the jurisdictional issue, on June 19, 1984 (No. 84-8076) without reaching the merits. APP. E-1.

[9] An answer by certain plaintiffs, supporting Dow Jones' request, was rejected by the Ninth Circuit on May 10 because no order under Rule 21(b) permitting answers had issued. On May 14, plaintiffs filed a motion for permission to file that answer. ER 50. Defendants opposed but, in the alternative, asked for an opportunity to file an answer. ER 53. These motions were pending when the panel issued its final judgment on June 19, 1984. An Appendix of Excerpts of Record ("ER") will be separately submitted.

41(a), by the timely filing of the petition for rehearing, leaving in place the District Court's stay pending appeal. Defendants recited this determination in the petition for rehearing. ER 73.

Between August 15 and 21, 1984, defendants learned that plaintiffs interpreted the June 19 Order as immediately effective in vacating the stay pending appeal. ER 150-162. Dow Jones and plaintiffs asserted the view that appellate Rule 41(a) does not apply to proceedings on petitions for extraordinary writs, making the absence of a mandate irrelevant. ER 161. Under this view disclosure would be proper and would occur on August 28—seventy days after June 19.

Reasonably believing that unlawful disclosure was imminent, defendants applied to the District Court on August 22 for a temporary restraining order and preliminary injunction to maintain the status quo pending resolution of the status of the District Court's stay pending appeal. The District Court, Honorable A. Wallace Tashima presiding in Judge Gray's absence, after a brief hearing, entered a stipulated order on August 23 that kept the original stay pending appeal in effect until September 6, 1984. APP. F. Judge Tashima warned defendants that preliminary injunctive relief would likely be denied for lack of District Court jurisdiction and strongly advised the parties to take the matter of the status of the stay to the Ninth Circuit for expedited resolution prior to September 6.[10] Dow Jones cross-moved on August 29 for an order to unseal the District Court's record.

On August 28, 1984, defendants filed an emergency request for relief pursuant to 28 U.S.C. § 1651(a) with the Ninth Circuit. ER 103-165. In addition to resolution

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[10] The District Court had jurisdiction under 28 U.S.C. § 1651(a) to protect its record so as to preserve the two pending appeals in the Ninth Circuit. *E.g., In re Thorp*, 655 F.2d 997, 998 (9th Cir. 1981) (District Court is divested of jurisdiction over subject matter of pending appeal "except in aid of [appeal] jurisdiction").

of the status of the stay pending appeal under Rule 41 (a), defendants requested relief necessary to prevent disclosure so as to preserve jurisdiction over the petition for rehearing of the *ex parte* June 19 Order.[11] Defendants alternatively requested independent entry of a stay pending the appeal in No. 84-5878. Such an order would have superceded the controversy arising from the June 19 Order. Despite defendants' request, the Ninth Circuit did not rule by September 6.

During this time, all parties had assumed that no mandate implementing the June 19 Order had issued from the Ninth Circuit. On September 5, defendants learned for the first time that a certified copy of the June 19 Order, identified as a mandate, had been "lodged" in the District Court MDL 150 docket on June 21, 1984. On the same date staff at both the District Court and Court of Appeals' clerk's offices reported their understanding that issuance of this document as a mandate may have been a mistake and that the timely filing of the petition for rehearing in Ninth Circuit No. 84-7262 should have or did stay the mandate, and that the Ninth Circuit clerk's office would clarify this situation immediately.

On September 6, at the hearing on the motion for preliminary injunction, the District Court took judicial notice of the issuance of a mandate and stated its understanding that it may have issued as a result of "clerical error." APP. C-4. Judge Tashima took the view that, regardless of clerical error or any legal infirmity in the issuance of a mandate in violation of Rule 41(a), the District Court must accept the mandate at face value and treat the stay pending appeal as vacated; any remedies to rectify or change the resulting inequitable circumstance would properly be addressed to the Ninth Circuit.

The District Court ordered that the mandate, heretofore merely lodged, be filed and spread and further or-

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[11] Defendants sought, *inter alia*, an order granting the petition for rehearing and vacating the June 19 Order pending rehearing and for seven days thereafter.

dered, in effect, that the stay of disclosure pending appeal be vacated as of September 6. APP. C-5-6. Under the provisions of the original Order (APP. B-1), this commenced the running of sixty and seventy-day periods leading to automatic disclosure. Defendants are now subject to obligation to complete a review, described by the District Court as "laborious and expensive" (APP. B-25), of the sealed items to be disclosed to the public in order to identify any that may be so commercially sensitive as to rebut the presumption of public access.[12] The terms of this review obligation are part of the appeal of the disclosure ruling, therefore defendants are now irreparably injured by loss of rights to an effective appeal, and this injury increases each day. Complete disclosure of most or all of the sealed material will occur automatically on November 15, 1984, completely mooting the appeal. The District Court expressed its expectation that the Court of Appeals would soon act if it disagreed with respect to the proper status of the stay pending appeal. APP. C-5.

On September 11, 1984, in light of the newly-discovered improvident issuance of the mandate, defendants filed in the Court of Appeals an emergency petition to recall the mandate and restore the status quo at least until disposition of the petition for rehearing in No. 84-7262. ER 232. Defendants sought this relief, along with the relief requested in the now-foreclosed August 28 Emergency Petition, by September 17. After that date, the ongoing injury through loss of the stay is at a point that makes grant of the relief requested less than sufficient to permit full and effective review of the portion of the District Court Order setting forth the review procedure.

Defendants' petition for rehearing and the August 28 emergency petition are now foreclosed by the issuance

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[12] Because of the terms of the MDL 150 umbrella protective order, most of the sealed items had not previously been required to be reviewed for purposes of identifying specific confidentiality and, therefore, had not been so reviewed.

and implementation of the mandate. APP. C-5. Briefing of the important merits disclosure appeal will be completed in early November.[13] It is, therefore, no longer possible for that merits disclosure appeal to be decided before actual disclosure is complete on November 15. Because immediate relief is necessary to preserve those portions of the appeal not already lost, defendants-petitioners have separately filed this date (1) an application to the Circuit Justice for the Ninth Circuit to stay the disclosure order pending disposition of this petition and (2) an alternate motion to accelerate consideration of this petition.

REASONS FOR ISSUING THE WRIT

I. THE ACTIONS BELOW INVOLVE IMPORTANT QUESTIONS VITAL TO THE ADMINISTRATION OF JUSTICE IN THE FEDERAL COURTS; RESOLUTION OF A CONFLICT BETWEEN CIRCUITS CAN BE ACHIEVED BY EXERCISING JURISDICTION OVER THIS MATTER

The actions in conflict with appellate rules indicate a need for review that goes beyond the specific injury to petitioners. The evidence in the Court of Appeals is that the violations of appellate rules now complained of are not specific to this matter but represent unpublished custom and practice of the Ninth Circuit. Moreover, the three appellate rules at issue are not ministerial but embody and confer rights vital to the preservation of due process. The right to be heard against the petition of an adversary, the concern of Rules 21(b) and 34(a), and the right to pursue appellate review from judgments of the Court of Appeals, the concern of Rule 41, warrant vigilant supervision by this Court. If such rights may be foreclosed by unpublished practice, then a serious

[13] Appellants' (defendants') brief was filed August 27; the last Appellees' brief is due October 12; Appellants' reply brief is due 21 days after service of the last appellee brief (no later than November 5).

threat to the administration of justice in the Ninth Circuit exists.

The Ninth Circuit practice to treat petitions for extraordinary writs as outside the scope of Rule 41(a) is in direct conflict with the Second Circuit. *See Bridge C.A.T. Scan Associates v. Technicare Corp.*, 710 F.2d 940, 947 (2d Cir. 1983) (applying appellate Rule 41(a) in a mandamus proceeding). Moreover, if a general rule such as Rule 41 may be construed as inapplicable to some proceedings, then the scope of the many other "General Provisions" in the rules is doubtful—fostering more uncertain and capricious unpublished practices.[14] We assume that a practice to deny answers and arguments on petitions for extraordinary writs conflicts with practice in other circuits.

Similar injuries may have occurred and may recur but escape review for a variety of reasons—including lack of time for injured litigants to react effectively. The unique circumstances of this case have combined to permit reaction, and present an opportunity for this Court to examine important matters capable of repetition but usually evading review. Time, however, is pressing defendants and only prompt action by this Court can preserve review over these important due process matters, resolve the clear conflict respecting Rule 41, and preserve review over the underlying public access appeal which defendants seek to protect from becoming moot.

The issue raised by the underlying appeal is itself sufficiently important to warrant this Court's action to preserve appellate jurisdiction. As set forth below, it draws a line of controversy between privacy rights and public access rights, both of constitutional dimension, at a place not heretofore addressed by this Court. The decision in

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[14] Title VII, Rules 25-48, of the Federal Rules of Appellate Procedure are "General Provisions" that, therefore, do not specifically state that they apply, *inter alia*, to proceedings for extraordinary writs. See page 17 and note 19 below.

Seattle Times Co. v. Rhinehart comes very close to the area of controversy but did not address pretrial material filed at the courthouse as distinct from raw discovery. The viability of protective orders, essential "to secure the just, speedy and inexpensive determination of every action," FED. R. CIV. P. 1, is threatened by the analysis below. That analysis removes any check on improper use of lawsuits to obtain and publish private information or to harass litigants by threat of such publication. These discovery devices are themselves vital to the efficient administration of justice, warranting scrutiny by this Court. Potential jurisdiction over these important issues will be lost absent prompt action from this Court.

The focus of the circumstances below is an exercise of the office of mandamus over a discretionary decision to enter a stay pending appeal. The Court of Appeals' interference with that discretionary decision represents an exercise contrary to decisions of this Court (see pages 20-22 below) that, if not checked, will lead to inconsistent treatment of such stays within a federal system that depends on even-handed treatment of litigants.

II. PETITIONERS' EFFORTS TO OBTAIN ADEQUATE RELIEF FROM THE COURT BELOW WERE UNSUCCESSFUL IN OBTAINING EVEN A HEARING ON THE STAY ISSUE

Petitioners have pursued all lawful and practicable means in the courts below to obtain a stay pending appeal of an important public access decision. On the only occasion when the matter was briefed by both sides, the standards for entry of a stay were determined to be met and a stay was entered by the District Court. Defendants sought to be heard in answer to the petition for mandamus to vacate the stay, but were barred from initiating a response by appellate Rule 21(b). Upon issuance of the *ex parte* order to vacate the stay, defendants timely filed a petition for rehearing. Defendants reacted promptly to the unexpected, threatened disclosure based on the *ex parte* order by promptly seeking injunc-

tive and other emergency relief, pursuant to 28 U.S.C. § 1651(a), from both the District Court and the Court of Appeals. Upon the discovery of and the filing and spreading of the unlawfully issued mandate in September, defendants promptly moved the Court of Appeals to recall the mandate.

Despite a duty to do so in order to preserve its jurisdiction and to avoid substantial injustice to petitioners, the Ninth Circuit declined to rule within a time when relief would have been effective on (1) defendants' petition for rehearing, (2) defendants' emergency petition for relief in aid of jurisdiction. It has similarly failed to rule on defendants' emergency petition to recall the mandate. The *ex parte* order of June 19, 1984, has been implemented without possibility of ordinary appeal, eliminating the stay pending appeal approved by the District Court. There are no further requests that defendants could make to the Court of Appeals that were not encompassed by the three post-final petitions and now foreclosed by the inadvertent or improvident issuance of the mandate. Defendants only practicable means of obtaining a hearing on the appeal of the stay pending appeal (No. 84-7262), and thereby protect jurisdiction over the important appeal in No. 84-5878, is through extraordinary review by this Court.

III. BY ACTING *EX PARTE* AND IN VIOLATION OF APPELLATE RULES 21(b) AND 34(a), THE COURT OF APPEALS DENIED DUE PROCESS TO PETITIONERS AND EXCEEDED ITS JURISDICTION UNDER THE ALL WRITS ACT

In issuing a final judgment *ex parte*, the Court of Appeals acted in violation of the Due Process Clause and Rules 21(b) and 34(a), FED. R. APP. P. The result was an order that thwarts, rather than aids, appellate jurisdiction over a disclosure ruling raising new and important issues—a serious abuse of the authority conferred by the All Writs Act. In declining to reconsider or cure the defects in its June 19 Order, the Court of Appeals

has impeded defendants' constitutional right to appeal the June 19 Order as well, compounding the misdirection of the mandamus power.

The appellate rules governing extraordinary writs explicitly provide that a writ of mandamus may not issue without first permitting respondents to be heard. Rule 21(b) provides in relevant part:

> (b) Denial; Order Directing Answer. If the court is of the opinion that the writ should not be granted, it shall deny the petition. *Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order* . . . . (Emphasis added.)

No such order issued. Indeed, in the absence of such a briefing order the Ninth Circuit clerk's office rejected filing of a brief by one group of respondents. Note 9 above.

Rule 21(b) also explicitly contemplates hearing oral argument on petitions for writs of mandamus. No argument was scheduled or heard, nor did the Court make the determinations necessary to dispense with oral argument under FED. R. APP. P. 34(a) and Ninth Circuit Rule 3(a)-(b). Appellate Rule 34(a), which is a general provision applicable to all proceedings in the courts of appeals,[15] requires oral argument "*in all cases* unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed." (Emphasis added.) It specifies a strict "minimum standard" to be met before oral argument can be foreclosed and even provides parties with an opportunity to be heard on the question whether to dispense with oral argument. The Ninth Circuit ignored both Rule 34(a) and its own local rule, further depriving defendants of their right to be heard.[16] Moreover, under the governing standards,

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[15] Rule 1, FED. R. APP. P., Advisory Committee Note.

[16] Ninth Circuit Rule 3(a)-(b) provides that oral argument "*will be allowed in each case* absent a specific finding . . . that oral argu-

oral argument could only have been denied if the petition for mandamus had been denied without briefing.

Dow Jones has argued that the June 19 Order was not *ex parte* because, in separate appeals, defendants allegedly filed briefs touching upon some issues relevant to Docket No. 84-7262. There can be no support for the proposition that briefs in other dockets could, under any circumstances, be deemed to satisfy defendants' due process right to be heard in response to a petition for mandamus. The circumstances of the briefs identified by Dow Jones demonstrate why such a result would be manifestly unfair.[17] Moreover, the suggestion that the panel issuing the June 19 Order considered these other briefs is rank speculation. Due process entitles defendants to decide what answer they will make to an adversary's petition and to have notice of the record on which final judgments are made.[18]

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ment is not needed." (Emphasis added.) SA-5. It provides for notice of any determination to deny oral argument, and of the reasons therefore, and allows the parties to argue for reconsideration of such a finding.

[17] The first alleged "response" was defendants' opposition to a motion to vacate the stay filed in No. 84-8076, in which Dow Jones unsuccessfully sought permissive review of the stay under 28 U.S.C. § 1292(b). That briefing addressed standards governing issuance of a stay pending appeal but explicitly did not address the central issues in the mandamus proceeding—whether the mandamus power is available to review and overturn a discretionary stay pending appeal and whether the stringent criteria for issuance of an extraordinary writ were satisfied on the facts and circumstances of this case. The appeal in No. 84-8076 was denied for lack of jurisdiction without reaching the motion to vacate the stay. APP. E. The second alleged "response" was filed January 4, 1984, in another mandamus proceeding raising completely different issues, *before* the instant dispute had arisen or could even be anticipated.

[18] To have considered items filed in other dockets without notice to the parties obviously would be unfair. If the Court of Appeals intended to or wished to consider briefs in related dockets, it would have notified all parties. If it wished to avoid repetition of matters discussed in other dockets, it could have said as much in an order pursuant to Rule 21(b).

Finally, in vacating the stay pending appeal, the Court of Appeals has exceeded its jurisdiction under 28 U.S.C. § 1651(a). That statute authorizes only writs "necessary or appropriate in aid of [the courts of appeals'] jurisdictions." Elimination of the stay necessarily jeopardized the appeal of the disclosure ruling in Ninth Circuit Docket No. 84-5878. The subsequent refusal by the Court of Appeals even to consider defendants' legitimate requests to appeal or preserve appeal of the June 19 Order also exceeded that authority.

IV. THE MANDATE OF THE JUNE 19 ORDER ISSUED IN VIOLATION OF APPELLATE RULE 41(a)

In order to protect litigants' rights to pursue reconsideration, modification and appellate review of final judgments in a court of appeals, appellate Rule 41(a) provides for an automatic stay of issuance of the mandate, unless otherwise ordered. The rule states in relevant part:

> The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. . . . The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court.

Had the Court of Appeals adhered to this rule, the District Court's stay pending appeal would have remained in effect pending disposition of the petition for rehearing, and the initial error—*ex parte* disposition of a petition for mandamus—could have been corrected.

Dow Jones claims that Rule 41(a) does not apply to the June 19 Order because the Rule "governs appeals" but not proceedings in mandamus. ER 180. The Court of Appeals apparently takes the same view. In support of its position that Rule 41 is no bar to immediate implementation of the June 19 Order, Dow Jones presented evidence of a practice of the Ninth Circuit to issue mandates immediately in all proceedings for extraordinary

writs. ER 212-13. Thus, without an authorizing order by the Court of Appeals—and without the notice that such order necessarily would imply—the Ninth Circuit Clerk's office issued the mandate immediately upon the filing of the June 19 Order. The parties remained unaware of this action until September.

Proceedings in mandamus plainly are encompassed by Rule 41. First, the language of the rule nowhere limits its application by the jurisdictional basis for the particular appeal.[19] Moreover, the position that Rule 41 does not apply to mandamus proceedings would create anomalies and gaps in the Federal Rules of Appellate Procedure.[20] For example, such position would illogically imply that defendants' petition for rehearing is impermissible and that review of a final judgment in a mandamus proceeding by writ of certiorari is not available.[21]

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[19] Rule 41 appears under the heading "Title VII. General Provisions," in contrast to other rules the "[a]s indicated by the titles under which they are found," apply only to specific types of proceedings, for example, those for extraordinary writs (Rule 21), or for review of *habeas corpus* proceedings and appeals in *forma pauperis* (Rules 22-24). Rule 1, FED. R. APP. P., Advisory Committee Note. Rule 41, therefore, applies to "all proceedings." *Id.*

[20] There are many provisions like Rule 41, that, being general, do not explicitly state that they apply to proceedings in mandamus, in bankruptcy, in *habeas corpus*, etc. Under the Ninth Circuit's approach, these rules (Rules 1-2, 25-48) would not apply to such proceedings.

[21] Petitions for rehearing are governed by appellate Rule 40, a rule as general as Rule 41(a). The position that Rule 41 does not apply to mandamus proceedings would imply that review by writ of certiorari is also unavailable. Rule 41(b), FED. R. APP. P. Yet this Court reviews final orders in mandamus proceedings by writ of certiorari. *E.g., Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 667 (1978); *Will v. United States*, 389 U.S. 90, 107 (1967); *La Buy v. Howes Leather Co.*, 352 U.S. 249, 260 (1957); see 9 MOORE'S FEDERAL PRACTICE ¶ 110.27.

There is no tenable basis for concluding that a mandamus proceeding is not appellate in nature and, therefore, not governed by the general appellate rules.[22]

The Ninth Circuit's practice conflicts with that of the Second Circuit. In *Bridge C.A.T. Scan Associates v. Technicare Corp.*, 710 F.2d 940 (2d Cir. 1983), the Court of Appeals granted a petition for mandamus and vacated an order. It observed that "[the vacated] Order remains in effect until issuance of this Court's mandate which, pursuant to FED. R. APP. P. 41(a), will occur 21 days after entry of our judgment herein." 710 F.2d at 947. The Supreme Court itself routinely uses the terminology of Rule 41(a) in referring to an order granting or denying a petition for mandamus, or the writ itself, as a "judgment."[23]

A court of appeals is free to dispense with the automatic 21-day deferral of issuance of the mandate, or the automatic stay pending disposition of a petition for rehearing, *but it must so state in an order.* Rule 41(a), FED. R. APP. P. ("unless the time is shortened or enlarged by order"). Thus, the rule is flexible and can

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[22] The familiar characterization of mandamus as an extraordinary remedy does not alter the fact that it is a means to obtain appellate review. *Ex parte Peru*, 318 U.S. 578, 585 n.4 (1943); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 175 (1803) ("To enable this court then to issue a *mandamus*, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable [the court] to exercise appellate jurisdiction"). *See generally* 9 MOORE'S FEDERAL PRACTICE ¶ 110.26 ("[A]s the courts of appeals have by statute only an appellate jurisdiction § 1651 does not confer upon them any original jurisdiction." "If Congress has clearly evinced a statutory policy against appellate review of a particular type of interlocutory order, . . . then the orders are not reviewable by prerogative writ.").

[23] *E.g., Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 667 (1978) ("The judgment of the Court of Appeals is therefore *Reversed*"); *Will v. United States*, 389 U.S. 90, 107 (1967) (refers to a writ issued by the Seventh Circuit as "the judgment below"); *La Buy v. Howes Leather Co.*, 352 U.S. 249, 260 (1957) (affirming a "judgment").

accommodate a need for expedited implementation of a judgment, where appropriate. No such order issued below.[24]

A practice to issue all mandates forthwith is invalid because it is inconsistent with Rule 41, a rule promulgated by this Court. 28 U.S.C. § 2071. SA-1. *See also* FED. R. APP. P. 47 (authorizing courts of appeals to make only those local rules "not inconsistent with these rules"). SA-4. In addition, and regardless of its substantive appropriateness, a practice to issue immediately all mandates in proceedings for extraordinary writs would be invalid because of its secret nature. "The rules for the conduct of the business of each court of appeals, including the operating procedures of such court, *shall be published.*" 28 U.S.C. § 2077 (emphasis added), SA-1.[25]

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[24] The District Court has suggested that the clerk's certification of the June 19 Order could be construed as a separate order to shorten the time for issuance of a mandate under Rule 41(a). APP. C-3. But an "order," as the term is used in Rule 41, requires action by the Court itself, unless properly delegated to the clerk. Delegation of the substantive authority to implement judgments and foreclose appeals would be improper. In any event, this authority has not been delegated to the clerk. Rules of the United States Court of Appeals for the Ninth Circuit, Rule 22 (SA-6). An "order" also requires notice to the parties. FED. R. APP. P. 45(c) requires that the clerk, "immediately upon the entry of an order or judgment," "shall serve a notice of entry by mail upon each party to the proceeding. . . ." SA-4. Defendant-petitioners seek relief from this Court precisely, because the mandate issued on a secret timetable, without notice, while petitioners relied on the plain language of Rule 41(a) in concluding that issuance had been stayed by the timely filing of a petition for rehearing.

[25] The Ninth Circuit issued mandates in advance of the time specified by Rule 41(a) in the other two appeal dockets initiated by Dow Jones, pursuant to 28 U.S.C. §§ 1291 and 1292(b), but dismissed for lack of jurisdiction. APP. D and APP. E. Certified copies were lodged in the District Court on June 21, 1984 (APP. C-9, C-10), even though no order shortening the time for issuance of the mandate had been made in either matter. Defendants-

V. THE COURT OF APPEALS EXCEEDED ITS JURISDICTION IN VACATING THE DISTRICT COURT'S DISCRETIONARY DECISION TO STAY DISCLOSURE PENDING APPEAL

A. The Standards For Issuance Of A Writ Were Not Met

In issuing a writ to vacate a stay pending appeal, the Court of Appeals acted contrary to well-settled principles governing issuance of extraordinary writs. A writ of mandamus is a "drastic remedy" which must be reserved for the "rare," "exceptional" and "extraordinary" case. *Kerr v. United States District Court*, 426 U.S. 394, 402 (1976); *Will v. United States*, 389 U.S. 90, 95 (1967). "[T]he party seeking mandamus has 'the burden of showing that its right to issuance of the writ is "clear and indisputable" '." *Will v. United States*, 389 U.S. at 96 (quoting *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 384 (1953)).

Entry of a stay pending appeal rests with the sound discretion of the District Court.[26] Because the District Court acted within its discretion, mandamus, which is traditionally used "to confine an inferior court to a lawful exercise of its prescribed jurisdiction," *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 661 (1978), could not properly issue. The entry of a stay pending appeal could rarely, if ever, amount to the "judicial 'usurpation of power' " that must be present to justify this extraordinary remedy. *Will v. United States*, 389 U.S. 90, 95 (1967) (quoting *De Beers Consolidated Mines, Ltd. v. United States*, 325 U.S. 212, 217 (1945)). "Where a

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petitioners do not know whether this was an isolated occurrence or whether it reflects a practice inconsistent with Rule 41(a) that extends beyond proceedings for extraordinary writs.

[26] *E.g., Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission*, 260 U.S. 212, 219 (1922); *Becker v. United States*, 451 U.S. 1306, 1312 (1981) (Rehnquist, J., in chambers) ("usual discretion" of district court to grant a stay pending appeal); *In re Combined Metals Reduction Co.*, 557 F.2d 179, 193 (9th Cir. 1977).

matter is committed to discretion, it cannot be said that a litigant's right to a particular result is 'clear and indisputable,' " and mandamus is, therefore, improper. *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980) (quoting *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 666 (1978)).

Where there is nothing to suggest that the District Court abused its discretion in entering the stay (see Part C below), the Court of Appeals exceeded its authority in substituting its judgment for the lower court's. "[The] office [of mandamus] is not to control the decision of the trial court, but rather merely to confine the lower court to the sphere of its discretionary power." *Will v. United States*, 389 U.S. 90, 104 (quoting *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953)).

The Court of Appeals' use of the mandamus power to vacate the stay pending appeal was further inappropriate where the petitioner had alternate means to attain the relief that it sought. The usual procedure for review of a stay pending appeal is a motion to vacate filed in the merits appeal docket.[27] This recourse would have sensibly coordinated Dow Jones' concern for delay of access with the question whether any access was lawful. Dow Jones' concern for delay could also have been addressed by pursuing expedited treatment of the appeal of the disclosure ruling.[28] Finally, Dow Jones could have

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[27] 9 MOORE'S FEDERAL PRACTICE ¶ 110.26 n.1; *e.g.*, *United States v. South Bend Community School Corp.*, 692 F.2d 623, 627 (7th Cir. 1982); *Federal Trade Commission v. TRW, Inc.*, 628 F.2d 207, 210 n.3 (D.C. Cir. 1980); *Katz v. King*, 627 F.2d 568, 573 (1st Cir. 1980); *United States v. First National Bank*, 619 F.2d 774 (8th Cir. 1980); *In re Letters Rogatory to the Tokyo District*, 539 F.2d 1216, 1217-18 (9th Cir. 1976). *See* APP. C-6 n.6. Of course, to the extent Dow Jones did not oppose the stay below, it would first have to submit its position to the District Court or show that such action is impracticable. FED. R. APP. P. 8(a).

[28] *Cf. McSurely v. McClellan*, 697 F.2d 309, 317 (D.C. Cir. 1982).

opposed the stay in the District Court, testing its arguments against the stay before the court best suited to balance the equities arising from the particular facts and circumstances.[29]

Stays pending appeal are routinely entered in circumstances such as are present here.[30] The power of mandamus is available only as "necessary or appropriate in aid of [courts'] jurisdictions." 28 U.S.C. § 1651(a). Vacating the stay below could not have aided appellate jurisdiction over any matter, but has jeopardized jurisdiction over the appeal of important issues affecting substantial rights.

B. The Petition For Rehearing Should Have Been Granted Because, By Acting *Ex Parte*, The Court Of Appeals Necessarily Overlooked Significant Points Of Fact And Law

While petitions for rehearing often represent a losing party's last gasp, that is not the case here. Defendants prevailed on the stay issue in the District Court, after extensive briefing and against opposition by plaintiffs other than Dow Jones, and have yet to be heard by the Court of Appeals. By relying solely on Dow Jones' one-

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[29] *See Cumberland Tel. & Tel. Co. v. Louisiana Public Service Comm'n*, 260 U.S. 212, 219 (1922) ("[T]he court which is best and most conveniently able to exercise the nice discretion needed to determine this balance of convenience is the one which has considered the case on its merits and, therefore, is familiar with the record."); *Krause v. Rhodes*, 434 U.S. 1335 (Stewart, J., in chambers) (declining to rule on stay application before same is ruled upon by courts below). Dow Jones' failure to oppose the stay in the District Court should have been a complete impediment to obtaining extraordinary relief from the Court of Appeals. *Cf.* FED. R. APP. P. 8(a); Supreme Court Rule 44.4.

[30] *E.g.*, *In re Continental Illinois Securities Litigation*, 732 F.2d 1302, 1307 n.8 (7th Cir. 1984); *Providence Journal Co. v. F.B.I.*, 595 F.2d 889, 890 (1st Cir. 1979); *Antonelli v. F.B.I.*, 553 F. Supp. 19, 25 (N.D. Ill. 1982). *See also Crystal Grower's Corp. v. Dobbins*, 616 F.2d 458, 460 (10th Cir. 1980); *cf. United States v. Dorfman*, 690 F.2d 1230, 1235 (7th Cir. 1982).

sided presentation of the facts and circumstances surrounding the stay pending appeal, the strict standards for rehearing are met because, inevitably, "the court has overlooked or misapprehended" significant points of fact and law. FED. R. APP. P. 40(a).

It is not even certain that the significance of the stay to preserving jurisdiction over the appeal in No. 84-5878 was meaningfully disclosed to the panel issuing the *ex parte* writ. Dow Jones' petition did not advise the panel that the disclosure ruling was controversial, or that the ruling raised matters of first impression in the Ninth Circuit.

The petition was somewhat misleading in construing the disclosure decision as finding a right of "contemporaneous" access, which Dow Jones interprets as a right of immediate access. Only with this gloss could Dow Jones argue that a stay could not be reconciled with the newly-found access right. But the word "contemporaneous" has no meaning except in relation to some event. The District Court's ruling reveals that the appropriate event is "the judge's decision" on the merits. APP. B-18.[31] Since there had not been any dispositive decision involving the sealed material, any right of access contemporaneous to judicial action was not threatened by a stay.[32]

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[31] If the purpose of the common law right of access is to check judicial abuses . . . then that right should only extend to materials *upon which a judicial decision is based.*

Wilk v. American Medical Ass'n, 635 F.2d 1295, 1299 n.7 (7th Cir. 1980) (citations omitted; emphasis added). *Accord, e.g., Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd.*, 529 F. Supp. 866, 901 (E.D. Pa. 1981) ("the basis of a dispositive ruling"); *In re Continental Illinois Securities Litigation*, 732 F.2d 1302, 1308-11 (7th Cir. 1984); *see Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).

[32] There is an established line of cases using the phrases "contemporaneous review" or "contemporaneous access," but each finds that access should be contemporaneous with a trial or other dispositive hearing in open court. The seminal case is *In re Oliver*, 333 U.S. 257, 270 (1948) ("[t]he knowledge that every criminal trial is

Moreover, Dow Jones did not inform the panel issuing the writ that it had not opposed the stay in the District Court despite full opportunity to do so. This is an obstacle to obtaining jurisdiction over a stay that must, therefore, have been overlooked by the Court of Appeals. See note 29 above. The newspaper also created a false sense of urgency in the Court of Appeals by incorrectly presenting the lower court ruling as implicating important First Amendment rights[33] and by erroneously contending that one of the MDL 150 cases was close to resolution either on summary judgment or by settlement.

These material omissions in the record before the Court of Appeals merely particularize the inevitable consequences of *ex parte* adjudication. Defendants' petition for rehearing of the June 19 Order was uniquely meritorious and should at least have been considered below. Only action by this Court can revive rights lost by defendants and prevent further irreparable harm.

C. The District Court Did Not Abuse Its Discretion In Entering A Stay To Preserve The Status Quo Pending Appeal

The District Court's discretion was circumscribed only by the requirement that a stay represent a balance of the equities, in which no one factor determines the outcome.[34]

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subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power"). *E.g., In re Continental Illinois Securities Litigation*, 732 F.2d 1302, 1305 n.4, 1308-11 (7th Cir. 1984) ("contemporaneous access" to evidentiary hearings in open court).

[33] The District Court Opinion explicitly declined to find any First Amendment basis for its decision to expand public access rights, relying solely on common law precedent. APP. B-15-B-16. Dow Jones disagrees with such finding.

[34] The balance of equities involves four factors: "(1) the likelihood that defendants will ultimately prevail on the merits of their appeal; (2) the extent to which defendant[s] would be irreparably harmed by denial of the stay; (3) the potential harm to plaintiffs if the stay is issued; [and] (4) the public interest." *Turner v. Woods*, 559 F. Supp. 603, 619 (N.D. Cal. 1982), *aff'd*, 707 F.2d

1. *The Balance Of Interests Strongly Favors Maintenance Of The Stay Pending Appeal*

The balance of the varying interests of defendants, plaintiffs, Dow Jones and the public favored entry of the stay in order to prevent irreparable harm to the defendants. Defendant-petitioners are threatened with disclosure to the public, including their business competitors, of confidential, private files that they have been compelled to disclose to adverse parties under the liberal federal discovery rules. Loss of confidentiality from such disclosure cannot be undone or recompensed. As shown below, petitioners' likelihood of success in overturning the District Court's disclosure order is strong, and has been further strengthened by this Court's decision in *Seattle Times Co. v. Rhinehart*, 104 S. Ct. 2199 (1984). Thus, there is good reason to view this forced disclosure as unauthorized by law. Regardless of the merits of the disclosure order, petitioners are threatened with very serious irreparable harm in the form of loss of appellate rights.

> [T]he Constitution and laws entitle litigants to have their cases independently reviewed by an appellate tribunal. Meaningful review entails having the reviewing court take a fresh look at the decision of the trial court before it becomes irrevocable. Appellants' right of appeal here will become moot unless the stay is continued pending determination of the appeals. Once the documents are surrendered . . . confidentiality will be lost for all time. The status quo could never be restored.

Providence Journal Co. v. Federal Bureau of Investigation, 595 F.2d 889, 890 (1st Cir. 1979).[35]

1109 (9th Cir. 1983), *cert. granted*, 104 S. Ct. 1412 (1984); *accord Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

[35] *Accord Antonelli v. F.B.I.*, 553 F. Supp. 19, 25 (N.D. Ill. 1982); *Reed v. Rhodes*, 472 F. Supp. 603, 605 (N.D. Ohio 1979). The public interest in vigilant protection of rights, especially rights of privacy and appellate due process having constitutional dimension, is

Harm, if any, to plaintiffs and Dow Jones from a stay is minimal and is not properly viewed as irreparable. Plaintiffs, of course, have possession of the sealed items as litigants. The harm to the newspaper is no more than delay of access to materials that have not yet been subject to dispositive judicial action, and even this harm arises only by assuming that the newspaper will prevail on the merits of the disclosure appeal. Indeed, the delay complained of by Dow Jones is a necessary incident of due process and thus, by definition, cannot properly be considered as irreparable harm. *E.g., In re San Juan Star*, 662 F.2d 108, 112 (1st Cir. 1981) ("[W]e reiterate our oft-stated view that potential burdens of litigation or relitigation cannot alone constitute the requisite [irreparable] harm.").[36] The Court of Appeals should not have considered the time incident to litigation—including appeal—to constitute irreparable harm to Dow Jones.

2. *Defendants Are Likely To Succeed On The Merits Of The Disclosure Appeal*

The District Court's April 12 ruling holds that pretrial civil discovery is presumptively open to the public

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threatened by the elimination of the stay. A strong public interest in the umbrella protective order device as an aid to efficient resolution of disputes is threatened by the District Court Opinion and, therefore, by elimination of the stay. *See* authorities cited in note 38 below. Maintenance of the stay will ensure that these interests will be protected through authoritative resolution on appeal.

[36] *See also, e.g., Providence Journal Co. v. Federal Bureau of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979):

> Failure to grant a stay will entirely destroy appellants' rights to secure meaningful review. On the other hand, the granting of a stay will be detrimental to the Journal (and to the public's interest in disclosure) only to the extent that it postpones the moment of disclosure—assuming the Journal prevails—by whatever period of time may be required for us to hear and decide the appeals. Weighing this latter hardship against the total and immediate divestiture of appellants' rights to have effective review in this court, we find the balance of hardship to favor the issuance of a stay.

and, therefore, a valid protective order issued under Rule 26(c), FED. R. CIV. P., is ineffective once protected material is filed at the courthouse. Public access to such filed material is required by the common law principle of public trials, according to the decision below, even though the material in question has not been and may never be subject to dispositive action by a court. This decision was vulnerable at the time it was entered for several reasons. First, there are many lower court cases whose analysis indicates the contrary view that public access does not extend to unadjudicated civil pretrial material.[37] Second, since the undisputed purpose of the public access right is to allow monitoring of judicial performance, there is no logic in extending public access to material that has not been and may never be the basis of any dispositive judicial action. Third, the ruling below effectively nullifies protective orders issued under Rule 26(c), FED. R. CIV. P., especially umbrella orders long considered essential to managing complex proceedings such as MDL 150. This third point is in conflict with substantial but indirect authority,[38] and itself raises ques-

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[37] The District Court acknowledged three such decisions. *Tavoulareas v. The Washington Post Co.*, 724 F.2d 1010 (D.C. Cir. 1984), *vacated and reh'g en banc granted*, (March 15, 1984), *remanded*, (June 25, 1984); *Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd.*, 529 F. Supp. 866 (E.D. Pa. 1981); *Wilk v. American Medical Ass'n*, 635 F.2d 1295, 1299 n.7 (7th Cir. 1980). Among other cases reasoning contrary to the District Court and presented below are *In re San Juan Star Co.*, 662 F.2d 108 (1st Cir. 1981); *Joy v. North*, 692 F.2d 880 (2d Cir. 1982), *cert. denied*, 103 S. Ct. 1498 (1983); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165 (6th Cir. 1983), *cert. denied*, 104 S. Ct. 1595 (1984); *In re "Agent Orange" Product Liability Litigation*, 98 F.R.D. 539 (E.D.N.Y. 1983); *Cianci v. New Times Publishing Co.*, 88 F.R.D. 562 (S.D.N.Y. 1980); *Times Newspapers Ltd. v. McDonnell Douglas Corp.*, 387 F. Supp. 189 (C.D. Cal. 1974).

[38] *E.g.*, Rule 1, FED. R. CIV. P. (requiring construction of Rule 26(c) so as "to secure the just, speedy, and inexpensive determination of every action"); *In re San Juan Star Co.*, 662 F.2d 108 (1st Cir. 1981); *National Polymer Products, Inc. v. Borg-Warner Corp.*, 641 F.2d 418 (6th Cir. 1981); *Wilk v. American Medical Ass'n*, 635

tions important to the administration of justice that should be resolved, if not by this Court, by the Ninth Circuit.

The District Court described its ruling as raising "important" issues of first impression in this Circuit, (APP. B-13), and as a "controversial" ruling that should be "authoritatively resolved" on appeal to the Ninth Circuit.[39] For a stay pending appeal, it is enough to show that "serious legal questions" are presented and that defendants' appeal has "potential merit," *Providence Journal Co. v. Federal Bureau of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979), or that the area of the law is unsettled or that parties in similar situations have prevailed. *E.g., Republic Industries, Inc. v. Central Pennsylvania Teamsters Pension Fund*, 537 F. Supp. 1036, 1037 (E.D. Pa. 1982). Under this standard, defendants' appeal is meritorious.

Defendants' showing has since been made stronger. This Court recently spoke in the area of pretrial disclosure in civil cases and appeared to take an approach different from the District Court. *Seattle Times v. Rhinehart*, 104 S. Ct. 2199 (1984). *Seattle Times* holds that the press does not have a presumptive right to disclose information obtained through civil discovery, even when a newspaper is in legitimate possession of protected material by virtue of being a party to the lawsuit.

F.2d 1295 (7th Cir. 1980); *Martindell v. ITT*, 594 F.2d 291 (2d Cir. 1979); *International Products Corp. v. Koons*, 325 F.2d 403 (2d Cir. 1963); *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 529 F. Supp. 866 (E.D. Pa. 1981); *In re Coordinated Pretrial Proceedings in Western Liquid Asphalt Cases*, 18 Fed. R. Serv. 2d 1251 (N.D Cal. 1974); *see Marcus, Myth and Reality in Protective Order Litigation*, 69 CORNELL L. REV. 1 (1983) (cited with approval in *Seattle Times Co. v. Rhinehart*, 104 S. Ct. 2199, 2207 (1984)).

[39] APP. B-25. Dow Jones hailed the District Court's decision in its newspaper as breaking new ground and representing a dramatic expansion of newsgathering sources. The Wall Street Journal, Wed., Feb. 15, 1984, p. 10 (headlined "Oil Firms' Pre-Trial Documents Are Open To Public, Judge Rules").

In prior related decisions, addressing the scope of access to criminal trials, the necessary guidelines for identifying information subject to presumptive public access rights had been defined as, first, information traditionally open to the public and, second, information specifically required to monitor the judicial system.[40] No rights of access to satisfy curiosity about the subject matter of the lawsuit or the litigants should be protected by the Constitution or historical tradition. Applying the first part of this analysis to civil pretrial material, the unanimous Court in *Seattle Times* concluded that "discovered, but not yet admitted, information [is not] a traditionally public source of information." 104 S. Ct. at 2208. The decision appeared to draw the line of access at trial or, perhaps, evidentiary ruling, but did not address the finer distinction at issue below.[41]

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[40] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).

> First, the case for a right of access has special force when drawn from an enduring and vital tradition of public entree to particular proceedings or information. *Cf. In re Winship*, 397 U.S. 358, 361-62 (1970). Such a tradition commands respect in part because the Constitution carries the gloss of history. More importantly, a tradition of accessibility implies the favorable judgment of experience.
>
> Second, the value of access must be measured in specifics. Analysis is not advanced by rhetorical statements that all information bears upon public issues; what is crucial in individual cases is whether access to a particular government process is important in terms of that very process.

448 U.S. at 589 (Brennan and Marshall, J.J. concurring). *Accord Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606-07 (1982).

[41] The question answered in the negative was "whether parties to civil litigation have a First Amendment right to disseminate, *in advance of trial*, information gained through the pretrial discovery process." 104 S. Ct. at 2202 (emphasis added). The protective order upheld in *Seattle Times* prohibited dissemination of discovered information "before trial." *Id.* at 2208. Prior to this point, First Amendment rights were deemed minimal and, therefore, easily outweighed by separate government interests, such as in protective orders or efficient and fair adjudication.

[Footnote continued on page 30]

Had the decision in *Seattle Times* been available to the District Court, we believe it would have reached a different result. Where defendants can make such a strong showing of likelihood of success on that appeal, with the requisite irreparable harm, the stay pending appeal should not have been disturbed. This Court's process should be available to reinstate that stay and preserve appellate jurisdiction over the important questions raised in the appeal of the District Court's disclosure ruling, as well as to resolve the equally significant questions of appellate procedure raised herein.

CONCLUSION

The unique circumstances of an *ex parte* final disposition of a petition for mandamus have made the Court of Appeals' final order of June 19, 1984, extraordinarily frail. The consequences of this *ex parte* disposition have been made irrevocable by persistent violations of the Federal Rules of Appellate Procedure. These are extraordinary circumstances that warrant exercise of the specific powers conferred on this Court by the All Writs Act. For the reasons set forth above, and as "necessary and appropriate in aid of" this Court's appellate jurisdiction, this petition for a writ of mandamus should be granted and a writ, as prayed for, issued forthwith.

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[41] [Continued]

The issue below distinguishes between items that are the basis of a judicial decision and items filed at the courthouse in contemplation of possible decision.

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 84-7262

DC# MDL-150 WPG
Central California

DOW JONES AND COMPANY, INC.,
Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

STATE OF ARIZONA; STATE OF CALIFORNIA, *et al.*,
Real Parties in Interest.

ORDER

[Filed June 19, 1984]

Before: SCHROEDER, ALARCON and FERGUSON, Circuit Judges

The petition for a writ of mandamus is granted. The stay pending appeal of the disclosure procedure ordered by the district court is vacated.

MoCal 5/28/84

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

MDL-150 WPG

ALL CASES

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION

ORDER

[Filed April 6, 1984]

Having considered (a) motions by the plaintiff-intervenor Dow Jones Company, Inc. for access to material sealed pursuant to a protective order entered by this court, (b) a motion by the State Case plaintiffs pursuant to Paragraph 3 of the MDL-150 protective order to declassify certain documents, (c) memoranda supporting and opposing said motions, and (d) oral argument of all interested parties, and having set forth the applicable law in the court's MEMORANDUM OF DECISION entered February 10, 1984, which is incorporated herein by reference,

IT IS HEREBY ORDERED:

(1) Pursuant to the common law right to access and the MDL-150 protective order the following documents are subject to declassification: (a) Plaintiffs' pretrial briefs, including Florida's Supplement to the State

Cases Plaintiffs' Initial Pretrial Brief, and documents and exhibits attached to and cited therein; (b all summary judgment material filed under seal, including motions for summary judgment, opposing and supporting memoranda and documents cited in or attached thereto; and (c) material related to motions for judgment on the pleadings filed under seal, including such motions, opposing and supporting memoranda, and documents cited in and attached thereto. These documents shall be unsealed subject to the procedures set forth in paragraphs (3) and (4) below.

(2) The court is informed that the plaintiffs in the State Cases have served upon defendants' liaison counsel one copied set of the documentary exhibits to Plaintiffs' Initial Pretrial Statement that were filed with the court on November 3, 1983. Defendants shall promptly reimburse plaintiffs for one half the cost of reproducing such documents.

(3) Within sixty days following the entry of this Order, defendants shall identify and submit to the court and serve on plaintiffs those documents identified in paragraph (1) that they contend are trade secrets or presently so commercially sensitive that their disclosure would cause substantial harm to defendants' competitive positions. When submitting the documents, defendants may also submit memoranda explaining why categories of material ought to remain sealed and identifying which documents fall into each category. The defendants shall serve any such memoranda upon liaison counsel in both cases. Documents identified in paragraph (1) but not submitted for further protection pursuant to this paragraph or paragraph (4) shall be declassified and unsealed seventy days following the date of entry of this Order.

(4) Prior to submissions to be made pursuant to paragraph (3), each party shall review the materials identified in paragraph (1) that it submitted to the court

and deliver to any non-party a copy of any documents cited therein or attached thereto that contain information produced by such non-party covered by the MDL-150 protective order. Such non-party may then take part in the briefing procedure described in paragraph (3) by moving to intervene for that limited purpose. Upon intervention, a third party seeking to retain the confidentiality of documents shall agree to pay to the party incurring such costs a reasonably proportionate share of the expenses entailed in the review, copying and delivery of documents to the third party.

(5) With respect to any document called to the attention of the court pursuant to paragraphs (3) and (4) hereof, the court will take such action as it deems appropriate regarding declassification, depending upon the number of documents involved and the showings made.

(6) This Order is hereby stayed for thirty days, and thereafter pending appellate review if defendants shall have joined in a request to the Court of Appeals for an expedited review.

DATED: April 6, 1984

/s/ William P. Gray
WILLIAM P. GRAY
United States District Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. MDL-150-WPG

ALL CASES

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION

MEMORANDUM OF DECISION

[Filed February 9, 1984]

I. INTRODUCTION

The present controversy in these consolidated cases pits the public interest in open court proceedings against the private interest in the confidentiality of allegedly commercially sensitive information made available to opposing litigants by court process. This tension is not uncommon in complex civil litigation. At the center of the conflict are umbrella protective orders frequently entered to facilitate discovery in large cases. *See, e.g., In re Agent Orange Product Liability Litigation*, 98 F.R.D. 539 (E.D. N.Y. 1983); *Zenith Radio Corporation v. Matsushita Electric Industrial Co., Ltd.*, 529 F. Supp. 866 (E.D. Pa. 1981).

The protective order in these cases was initially entered in May 1974 by Judge Clarie of the District of Connecticut. I adopted it as part of Pretrial Order ("P.T.O.") No. 2 in January 1977, four months after the consolidation of the several cases by the Judicial

Panel on Multidistrict Litigation.[1] The consolidated cases, known as MDL-150, are complex civil antitrust actions involving the oil industry. The cases fall into two distinct classes, and P.T.O. No. 2 applies to both. One group, the "*State*" cases, is comprised of actions brought by the attorneys-general of several states against most of the major oil companies.[2] The plaintiffs charge a nationwide, indeed, a worldwide, conspiracy to create artificial shortages and to raise the prices of retail petroleum products, the alleged effects of which are commonly known as the "oil crisis" of the mid-1970's. The plaintiffs in the other set of cases, the State of California and the City of Long Beach, are owners of oil fields and sell their crude oil to the five defendant-integrated oil companies.[3] In these actions, dubbed "*Long Beach*," the plaintiffs allege a conspiracy to depress the prices of crude oil in Long Beach over a period stretching from the early 1960's to the late 1970's.

Presently, in both the *State* and *Long Beach* cases, there are numerous pending motions by defendants, and a few by plaintiffs, for partial and entire summary judgment on the pleadings. Some of these motions were filed as early as 1979, while the briefing on other summary judgment motions is not yet complete. In June 1982, the *Long Beach* plaintiffs filed their Statement of the Case, and in January 1983, the *State* plaintiffs filed their Initial Pretrial Brief.

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[1] The consolidation order is reported as In re Petroleum Products Antitrust Litigation, 419 F. Supp. 712 (J.P.M.L. 1976).

[2] Initially, the plaintiff states were: Florida, Connecticut, Kansas, California, Arizona, Oregon and Washington. Florida and Connecticut filed their actions in 1973. The rest came in 1974-1977. Kansas and Connecticut are no longer parties. The defendant corporations now are: Mobil Oil, Standard Oil of Indiana, Atlantic Richfield, Gulf, Standard Oil of California, Texaco, Phillips Petroleum, Union Oil, Exxon and Shell.

[3] The companies are: Texaco, Exxon, Union, Mobil, Shell, Atlantic Richfield and Standard Oil of California.

In April 1982, this court granted the motion of Dow Jones, Inc., publisher of the *Wall Street Journal*, to intervene for the purpose of seeking modification of the protective order in both the *Long Beach* and the *State* cases. I declined, however, to rule on Dow Jones' motion for declassification at that time and have so declined on four occasions since then, each time inviting the intervenor to renew its motion at the time of the formal hearings on the motions for summary judgment in the *Long Beach* case. More recently, California, Arizona, Florida, Oregon and Washington have moved for an order of declassification in the *State* cases. The *State* plaintiffs seek declassification[4] of all summary judgment motions and memoranda in support and in opposition (including attached exhibits and affidavits) and the plaintiffs' Initial Pretrial Brief (including Supplements and documents cited therein) filed under seal in the *State* cases. Intervenor Dow Jones asks that I lift the seal on: all summary judgment motions, memoranda in support and in opposition in both the *State* and *Long Beach* cases (including declarations and exhibits attached thereto or referenced therein); the plaintiffs' Pretrial Statement in the *Long Beach* case (including attached and referenced items, as above); and the plaintiffs' Initial Pretrial Brief in the *State* cases (with all attached and referenced exhibits and declarations). Both movants contend that the public has a constitutional and common law right of access to those materials and that most of the information under seal is not worthy of protection under the terms of the protective order. The defendants, of course, argue the opposite.

Dow Jones' most recent "continued" motion and the *State* plaintiffs' motions were heard together on November

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[4] The plaintiffs first served a "Notice of Objection" on ten defendants in January 1983, wherein plaintiffs made the request now addressed to the court. The protective order prescribes the procedure for objecting to a filing made under seal. *See* section II, below.

17, 1983. The central question before this court—to what extent may a previously imposed protective order be lifted in order to give the public access to civil pretrial materials—has not been decided in this circuit. As is set forth below, I conclude that declassification of most of the subject documents is appropriate at this time.

II. THE PROTECTIVE ORDER IN MDL-150

On May 21, 1974, at the inception of the two cases that grew into MDL-150, Judge Clarie granted an oil company defendant's motion for a protective order under Fed. R. Civ. P. 26(c)(7) "to prevent the imminent public exposure of . . . confidential trade secrets and information of commercial significance to competitors." This is the order that governs today. Under it, any portions of documents, depositions, or interrogatory answers may be designated "Confidential Material" by the party providing the information or by a party to whom the information relates. Confidential information may be used only for purposes of the instant litigation, and upon the termination of the litigation all such material and any copies must be returned to the party that produced it. The order provides for contemporaneous objections to the designation of something as "Confidential." If, after receiving a notice of objection, the designating party does not agree to declassification, the objecting party may move the court for an order of declassification. A primary by-product, if not a purpose, of the order was to facilitate discovery by avoiding document-by-document battles over protection. Thus, the order contemplates that the judge infrequently will be called upon to make individual Rule 26(c)(7) determinations. Much discretion lies with the litigants regarding the quantity and nature of material filed under seal or designated "Confidential" but not filed.

It is impossible to tell what showing was made or what standard Judge Clarie applied when he granted the

motion for a protective order in 1974. In 1977, when I incorporated his order into P.T.O. No. 2, the plaintiff states apparently agreed to closure, and there was no controversy.

The discovery disputes in MDL-150 up to now have had little to do with the protective order or with the propriety of filing materials under seal. Both plaintiffs and defendants have made "Confidential" designations, although those of the latter are much more numerous. The majority of docket filings over seven years have not been sealed. However, in recent years, as the cases have progressed into the summary judgment phase, the parties, and particularly the defendants, have filed many legal memoranda—as opposed to the raw fruits of discovery—under seal. Certainly, some of these summary judgment papers incorporate business data as well as legal arguments, but as the summary judgment motions have not yet been decided, this court still is not ready to determine the extent to which that business information is innocuous, inculpatory or commercially sensitive.

III. INTERESTS IN ACCESS

A. *The General Policy of Openness*

American courts long have recognized a general right to inspect and copy public records, including judicial records. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 & nn. 7, 8 (1978).[5] Thus, the Ninth Circuit has held that a first amendment right of access

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[5] The Federal Rules of Civil Procedure contemplate that documents filed with the court be open generally to the public. Rule 5(d) provides that all papers served upon a party after the complaint must be filed with the court unless the court otherwise orders. Clerks are instructed to make any court record available to anyone that asks for it, unless the record is filed under seal or disclosure is prohibited by statute. Administrative Office of the United States Courts, 4A GUIDE TO JUDICIAL POLICIES AND PROCEDURES § 201.3 (1980).

attaches to pretrial documents in criminal cases. *Associated Press v. United States District Court*, 705 F.2d 1143 (1983) (reversing trial court order sealing all documents in a criminal case). The law is less clear with respect to civil pretrial materials. *Compare Tavoulareas v. The Washington Post*, No. 80-3032 (D.C. Cir. January 6, 1984), and *Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd.*, 529 F. Supp. 866 (E.D. Pa. 1981), *with Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165 (6th Cir. 1983). As is discussed below, these decisions are conflicting with regard to the scope of the right in civil cases and whether it is based upon the common law or derives only from the Federal Rules of Civil Procedure.

Whether stemming from the Federal Rules, the common law or the Constitution, the general presumption of open court records and proceedings would seem to serve the same purpose: "assuring freedom of communication on matters relating to the functioning of government." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (plurality opinion). In concurring, Justice Brennan wrote, "public access to court proceedings is one of the numerous 'checks and balances' of our system, because 'contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power.'" *Id.* at 592 (quoting *In re Oliver*, 333 U.S. 257, 270 (1943)). The interest in access to court proceedings in general may be asserted more forcefully when the litigation involves matters of significant public concern.

B. *The Public Interest in This Litigation*

The cases before this court, both *State* and *Long Beach*, present many issues of fact and law. The *State* plaintiffs allege a conspiracy among some of the world's largest enterprises to raise and stabilize the retail prices of gasoline beginning in 1958 and continuing to 1981. One of the charges is that defendants' collusion on the

international front was a substantial cause of the shortage experienced in this country around the time of the Arab oil embargo in 1973 and later. The *State* plaintiffs also allege that the major integrated oil companies conspired on the domestic front to drive independent gasoline retailers out of business. If these charges prove true, the defendants' illegal conduct has affected the lives of all Americans. If these allegations are false, public officials have wasted many millions of dollars of taxpayers' money in prosecuting fruitless cases for nearly a decade.

While less momentous, the conspiracy alleged by the *Long Beach* plaintiffs would be of significant concern, if proved, to the citizens of California. If the charges prove true, state and local governments have been cheated out of many millions of dollars of revenue owed for the exploitation of public resources. If the defendants' counterclaims succeed, public officials will have been shown to have abused their discretion in the management of public resources to the detriment of the taxpayers as well as the defendants. Certainly, the public has an interest in learning of the factual and legal contentions in both cases.

It is possible that neither case will go to trial, and thus it is possible that some of the most damning of plaintiffs' charges never will be tested by the evidence. At the summary judgment stage of the litigation, the public interest in access is every bit as strong as it would be at trial.

The rationale for public access is especially apropos, it seems, when the plaintiffs' lawyers are public officials. In MDL-150, the plaintiffs are represented by the attorneys-general of Arizona, California, Florida, Oregon and Washington, as well as by private firms selected by government officials. In light of the cost of the litigation thus far, and considering the fact that the cases

have been in court for nearly ten years, the performance of the counsel as well as of the judge ought to be subject to public scrutiny. While the courtroom door has always been open, much of the information needed to understand the proceedings lies in documents filed under seal.

C. *Nature of the Materials Now Under Seal*

It is true, as the defendants point out, that most of the docket filings in MDL-150 have not been designated "Confidential." However, it also is true that what is sealed constitutes, overall, the most significant aspects of the litigation: how the plaintiffs intend to prove their cases and why they may or may not be able to show actionable wrongdoing. Most all of the memoranda and exhibits connected with the pending motions for summary judgment, as well as the plaintiffs' pretrial briefs, are sealed.

Some of the briefs contain the proponents' interpretations of historical events in the oil industry, of meetings and conversations that are alleged to have involved price fixing, of the effects of federal regulations on the prices and supply of petroleum products, and of the effects of recent developments in antitrust law on the viability of plaintiffs' damage claims. Certainly, public disclosure of these types of arguments would not adversely affect defendants' trade secret interests, competitive positions, or privacy rights. On the other hand, some of the briefs and exhibits discuss defendants' refinery capacities, the inter-refinery values of crude oil and information concerning defendants' marketing plans in the 1970's. It may be, as Dow Jones and the plaintiffs contend, that most of the data in this latter group are so stale as to have little, if any, commercial significance and that even when current, defendants shared this data with trade associations (such as the American Petroleum Institute) and the trade press (such as *Platt's Oilgram*). Defendants argue that an astute observer could derive the companies' cur-

rent strengths, weaknesses or strategies from even old information. Yet, defendants do not specify which documents remain sensitive irrespective of age.

At this juncture, it is clear that some of the sealed information never would have qualified for protection under the terms of P.T.O. No. 2 or Rule 26(c)(7). It is quite likely that most of the other sealed documents have lost their character as commercially sensitive due to the passage of time.

D. *Equipoise*

Defendants urged at one time that declassification should occur only when the materials are in "equipoise," that is, that the seal should be lifted only when a balanced picture of the controversies would be disclosed. There is some doubt in my mind as to whether "equipoise" is a proper consideration for a court in deciding a motion to declassify. We are not concerned here with any danger of prejudicial pretrial publicity, for trial does not loom on the horizon. Nor is it suggested that defendants would suffer the kind of "embarrassment" against which Fed. R. Civ. P. 26(c) may protect a party. It is not the duty of federal courts to accommodate the public relations interests of litigants.[6] In any event, it seems that a rough balance has been attained. Defendants have filed approximately fifty motions for summary judgment,

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[6] In Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1180 (6th Cir. 1983), the opinion noted:

> . . . [T]he natural desire of parties to shield prejudicial information contained in judicial records from competitors and the public . . . cannot be accommodated by courts without seriously undermining the tradition of an open judicial system. Indeed, common sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public's need to know. In such cases, a court should not seal records unless public access would reveal legitimate trade secrets, a recognized exception to the right of public access to judicial records.

including extensive memoranda in support and exhibits thereto. Plaintiffs have filed multi-volume initial pretrial briefs, attaching a multitude of exhibits, as well as responses to the defendants' motions. Thus, both sides have "fired their best shots" in stating their positions. Therefore, declassification need not be delayed on the ground that "equipoise" is lacking.

IV. BASIS FOR ORDERING DECLASSIFICATION

The preceding section sets forth the principle that adjudication is generally to be conducted in public and the primary reasons why the instant litigation should be no exception. As has been noted, the question of when the public access interest may outweigh the interest in confidentiality of pretrial documents in civil cases is undecided in this circuit. The following discussion illustrates that the basis of the access right, and hence its strength, may vary depending upon the stage of the proceedings and whether they are criminal or civil.

A. *The Federal Rules and Judicial Discretion*

Rule 26(c)(7) provides that upon a showing of good cause, a court may order that trade secrets, confidential research or other commercial information produced during discovery be protected from public disclosure.[7] The result of such an order is to place court records under seal.

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[7] While the Rule refers to protection from "annoyance, embarrassment, oppression or undue burden or expense," it has been held that Rule 26(c)(7) protects against competitive disadvantages as well. *E.g.* Vollert v. Summa Corp., 389 F. Supp. 1348 (D. Haw. 1975); Maritone Cinema Serv. Corp. v. Movies En Route, Inc., 60 F.R.D. 587 (S.D. N.Y. 1973). The good cause requirement is met by a showing that disclosure will work a clearly defined, specific and serious injury. *See, e.g.*, United States v. Hooker Chem. & Plastics Corp., 90 F.R.D. 421 (W.D. N.Y. 1981); Essex Wire Co. v. Eastern Elec. Sales Co., 48 F.R.D. 308 (E.D. Pa. 1980).

A trial judge has discretion in the granting of a protective order. *See generally* 8 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE § 2036 (1970 & Supp. 1983). This rule reflects the principle that "every court has supervisory power over its own records and files." *Warner Communications, supra*, 448 U.S. at 598. Hence, the matter of whether a protective order, once issued, should be lifted may be "left to the sound discretion of the trial court." *Krause v. Rhodes*, 671 F.2d 212, 219 (6th Cir. 1982).

In granting an umbrella protective order, the judge delegates to the litigants significant discretion to decide what shall be sealed. This is, in fact, contemplated by such an order: "If a judge, magistrate, or special master had to rule upon countless invocations of Rule 26 (c) (7), the progress of complex cases would be severely impeded." *Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd.*, 529 F. Supp. 866, 879 n.18 (E.D. Pa. 1981). A problem arises if it later appears that the parties have abused their authority to designate documents "Confidential" or that, for some other reason, some of the sealed information should not legitimately remain closed to the public.

In these circumstances, it would seem that a balancing must take place between the interests in access and the interests in confidentiality. The weight to be accorded each may vary depending upon what purposes the documents serve in litigation. For example, the District of Columbia Circuit recently held that as to filed documents that have never been submitted into evidence, read into the record or submitted in connection with a pretrial motion, the public access interest is relatively weak and is grounded only in the Federal Rules—it does not derive from either the first amendment or the common law. *Travoulareas v. The Washington Post*, No. 80-3032 slip op. at 12 (D.C. Cir. Jan. 6, 1984); *see id.* at 3 n.2. Thus, the interest in access to such materials can be out-

weighed by a less than strenuous showing that declassification would endanger privacy rights or trade secrets. *See id.* at 29-30. The public access interest in materials that do play a part in adjudication, such as the materials here at issue, is stronger: courts have found the interest to be based on the common law and, at least in criminal cases, on the first amendment.

B. *The First Amendment*

In arguing that the first amendment right of access should apply to civil as well as criminal proceedings, Dow Jones and the *State* plaintiffs urge this court to adopt the three-part balancing test set out in *Associated Press, supra*, 705 F.2d 1143, 1146 (9th Cir. 1983). If I were to do so, the documents at issue could not constitutionally remain sealed unless there appeared to be a substantial probability: (1) of irreparable damage to a defendant's right to a fair trial or other constitutionally protected interest; (2) that alternatives to confidentiality will not protect adequately that right; and (3) that sealing the documents will be effective in protecting against the perceived harm. *See id.*

The Supreme Court has not held that the Constitution provides a public right of access to civil proceedings, trials or documents.[8] Lower courts considering the ques-

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[8] Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) held that the first amendment implicitly guarantees a public right to attend criminal trials. Justice Stewart stated that the first amendment "clearly gives the press and the public a right of access to trials themselves, civil as well as criminal." *Id.* at 599 (Stewart, J., concurring). In Press Enterprise Co. v. Superior Court, No. 82-556 (U.S. Jan. 18, 1984), the Court extended the first amendment right of access to voir dire proceedings in criminal cases. It has been noted that the policy considerations and history supporting a first amendment right of access to criminal proceedings apply as well in the civil context. *See* In re Iowa Freedom of Information Council, No. 83-1573, slip op. at 4 (8th Cir. Dec. 30, 1983); Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1178-79 (6th Cir. 1983).

tion of access to documents have thus far declined to find such a right based on the first amendment, in part due to the Court's *Warner Communications* decision. 435 U.S. 589 (1978). There, Warner sought to copy the Watergate tapes used as evidence in a criminal trial. Transcripts of the evidence had been made available in full to the press and the public, and the trial judge had allowed the media to listen to the tapes. The Supreme Court found that "[t]here is no question of a truncated flow of information to the public," *id.* at 609, and the Court rejected Warner's argument that the first amendment secured its right to copy, and disseminate copies of, the tapes. A "crucial fact" was that Warner's request for physical access would "require a court's cooperation in furthering [its] commercial plans." *Id.* at 602-03.

The *Travoulareas* court interpreted *Warner Communications* to hold that there is no constitutional right to copy and disseminate judicial records or evidence used at trial. Slip op. at 14. The *Zenith* court opined that *Warner Communications* held that the first amendment does not establish a right to inspect and copy materials and exhibits used in open court proceedings. 529 F. Supp. at 913. A more narrow reading of the Court's holding certainly can be imagined, and such a reading would be more consistent with the Ninth Circuit's decision in *Associated Press, supra.* Nevertheless, it seems more appropriate to base the decision granting the motions to declassify on common law, as opposed to constitutional, grounds.

C. *The Common Law*

In *Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd.*, 529 F. Supp. 866 (E.D. Pa. 1981), a decision upon which the defendants here rely extensively, Judge Becker faced a similar challenge to an almost identical protective order. The *Zenith* opinion reviews the common law right of access to "judicial records"

and finds that the right attaches, presumptively, to: (1) materials filed with the court, unless filed under seal pursuant to court order; (2) transcripts of open court proceedings (and portions of documents read in open court, even if filed under seal); (3) material that is the subject of an evidentiary ruling (even if originally sealed); (4) material referred to at a hearing, to the extent that the reference is more specific than general; and (5) material filed under seal that has become the subject of a dispositive ruling and published opinion. *Id.* at 895-901. The rationale behind this roster is that courts have an obligation to explain their decisions and therefore to allow the public an opportunity to assess the correctness of those rulings. *See id.* at 901. *See also Tavoulareas, supra,* slip op. at 12. Thus, under the *Zenith* view, common law public access interests need not be considered when entering a Rule 26(c)(7) protective order because those interests simply do not attach until, essentially, the judge makes a ruling based upon the subject documents.

In contrast to the *Zenith* view of the common law is the recent decision in *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165 (6th Cir. 1983), vacating the district court's order sealing all documents filed by the Federal Trade Commission in an injunctive action brought by the tobacco company to prevent proposed agency action. In *Brown & Williamson,* the Sixth Circuit found a "strong common law presumption in favor of public access to court proceedings and records." *Id.* at 1179. The court relied primarily on *Richmond Newspapers, supra,* 448 U.S. 555 (1980), and explained that the policy considerations supporting a public right of access to criminal trials apply as well to civil trials and pretrial proceedings. Thus, the Sixth Circuit decided that a common law public access right attaches, presumptively, to all documents filed for the court's consideration in a civil case such that the district judge must

take such access interest into account in determining the propriety of closure. Unlike *Zenith*, in *Brown & Williamson*, the court apparently decided that documents need not have been the subject of a judicial decision for the presumptive access right to attach.

Since the motions for summary judgment in MDL-150 have not yet been decided, the significance of the difference between *Brown & Williamson* and *Zenith* is that under the former view of the common law, the presumptive public access right has already attached to the documents at issue here, while under the latter view it has not. Both decisions state that even after the access right has attached, countervailing interests may outweigh the presumption of access. *Brown & Williamson, supra*, 710 F.2d at 1179-80; *Zenith, supra*, 529 F. Supp. at 901-05. *See also Tavoulareas, supra*, slip op. at 15-27.

I am troubled by the *Zenith* classification of materials to which the common law access right attaches. If the rationale behind access is to allow the public an opportunity to assess the correctness of the judge's decision, *see Zenith*, 529 F. Supp. at 897-901; *Wilk v. American Medical Ass'n*, 635 F.2d 1295, 1299 n.7 (7th Cir. 1980), documents that the judge *should* have considered or relied upon, but did not, are just as deserving of disclosure as those that actually entered into the judge's decision. Further, in determining which items are presumptively open, there seems to be no real justification for drawing a line between documents submitted to the court in connection with a motion *before* the judge decides the motion and the same documents *after* the decision. While it might be argued that the judge's familiarity with the content serves to screen scandalous, irrelevant or sensitive commercial information, the issue is at what point the presumptive access right attaches—not whether countervailing interests will overcome the presumptive right, and certainly not whether the information will be relevant at trial. Indeed, for the presumptive right to

be suspended or nonexistent until after the judge has ruled on a motion, would be to impair the important interest in contemporaneous review by the public of judicial performance. *See Richmond Newspapers, supra,* 448 U.S. at 592 (Brennan, J., concurring).

IV. APPLICATION OF THE COMMON LAW

Based on the principles discussed above, I find that a strong common law presumption of access has attached to all of the documents at issue.[9] The next step is to consider whether countervailing interests, such as the interest in maintaining the confidentiality of trade secrets and other sensitive commercial information of use to competitors, outweigh the access right as to any of the documents. The defendants, relying upon *Zenith, supra,* 529 F. Supp. at 875, 894, would have this court place on the movants the burden of showing that confidentiality interests do not overcome access interests. This I decline to do.

First, Dow Jones, an intervenor, can hardly be said to have "ratified" P.T.O. No. 2 or "waived" its right to

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[9] These presumptively open documents include the plaintiffs' pretrial briefs (and documents and exhibits cited therein) as well as the summary judgment materials. It should be noted that these pretrial briefs have been submitted, in part, for the court's consideration in ruling on the summary judgment motions. Plaintiffs' memoranda opposing summary judgment refer to information in, indeed to whole chapters of, their pretrial briefs. And, in the *State* cases, this court's "Order Amending Pretrial Order No. 6 And Providing for Form of Initial Pretrial Briefs," dated Dec. 2, 1982, contemplated that at least some of the defendants motions for summary judgment would be targeted at the allegations in the pretrial briefs. The public access right also has attached to Florida's Supplement to the plaintiffs' Initial Pretrial Brief (in the *State* cases) and all documents cited therein. Similarly, the plaintiffs' "Common Issues Brief" in the *Long Beach* case (including all cited materials) is presumptively open. And, of course, the memoranda exhibits and cited documents connected with the few motions for judgment on the pleadings are included in the presumptively open category.

seek declassification *en masse* by failing to bring contemporaneous motions to declassify, as Judge Becker found was true of the plaintiffs in *Zenith*. *See id.* Second, the argument that the defendants' reliance on P.T.O. No. 2 during years of discovery shields them now from the burden of justifying protection of the documents ignores the fact that civil litigants have a legal obligation to produce all information "which is relevant to the subject matter involved in the pending action," Fed. R. Civ. P. 26(b)(1), subject to exceptions not involved here. Thus, defendants cannot be heard to complain that their reliance on the protective order was the primary cause of their cooperation during years of discovery: even without P.T.O. No. 2, I would eventually have ordered that each discoverable item be turned over to the plaintiffs. Umbrella protective orders do serve to facilitate discovery in complex cases. However, umbrella protection should not substantively expand the protection provided by Rule 26(c)(7) or countenanced by the common law of access. To reverse the burden in this situation would be to impose a significant and perhaps overpowering impairment on the public access right. Finally, in light of the considerable passage of time since P.T.O. No. 2 was issued and the absence in the record of any indication that the defendants carried the burden of showing that a substantial and specific harm to their competitive positions would result if the documents were disclosed, I do not believe it unfair to require the defendants to show at this juncture that some (if any) of the documents here at issue are currently worthy of protection.

Accordingly, the defendants are invited to suggest to the court, not later than ten days hence, a time period within which they shall submit any of the subject documents (described in footnote 9) that they believe truly to be worthy of continued protection. Defendants shall serve that paper upon the movants herein, and the latter may propose, if they wish, a different time period. When

submitting the documents, defendants may also submit memoranda explaining why categories of information ought to remain sealed and identifying which documents fall into each category. The defendants shall serve any such memoranda upon the *State* and *Long Beach* plaintiffs' liaison counsel.[10] The plaintiffs shall have the opportunity to oppose, by written brief, the defendants' designations. I wish to make clear my intention to withhold from the public only that information that remains a trade secret or is actually commercially sensitive such that its disclosure would cause more harm to defendants' competitive positions than its nondisclosure would to the public's access interests.

In Section III C., above, I explained that the danger of prejudicial pretrial publicity is weak at present. No trial date has been set, and the resolution of the various motions for summary judgment and other pretrial matters will occupy several additional months. It should also be noted that defendants' privacy interests in the documents do not rise to the level found in *Tavoulareas*, *supra* (slip op. at 23-26), since the materials here at issue will play a part in adjudication. I further admonish the defendants that their conclusory statements regarding commercial sensitivity made thus far in connection with the instant motions to declassify will not suffice to establish that there is a significant and specific need for continued protection.

V. PROTECTION FOR THIRD PARTIES

Getty Oil Company, once a defendant in the *State* cases, urges the court to make provision for the privacy

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[10] The *Long Beach* plaintiffs, who support declassification, have access to the *Long Beach* files and are currently subject to the protective order. Dow Jones is not in this position, and to disclose the contested documents to Dow Jones for purposes of participating in this final determination would compromise any legitimate trade secrets contained in the files. *See* In re Iowa Freedom of Information Council, *supra* note 8, at 6.

and property interests in trade secrets and commercially sensitive information of third parties, such as itself. Getty asserts that it and other third parties have produced many documents to both the *State* and *Long Beach* parties and that some of these materials, now filed under seal, are among the papers that Dow Jones seeks to declassify. The fact that some of the documents submitted in connection with the motions for summary judgment are papers produced from third parties does not take those documents out of the category to which the public has a presumptive right of access. On the other hand, third parties have a right to know which of the sealed documents they produced are among those subject to disclosure so that they can argue that the disclosure would cause a specific and serious injury to their commercial interests. The following procedure should accommodate both sides. All parties shall review all documents presumptively subject to declassification submitted by them and deliver to any non-party a copy of any document containing information produced by such non-party.[11] Such a non-party may then take part in the briefing procedure described in the preceding section by moving to intervene for that limited purpose. Upon intervention, a third party seeking to retain the confidentiality of documents shall agree to pay to the party incurring such costs a reasonably proportionate share of the expenses entailed in the review, copying and delivery of documents to the third party. When the proposed screening process shall have been completed, the current protective order will be

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[11] If such a document contains sealed information that was *not* produced by the non-party, the party delivering the document shall take reasonable precautions to ensure that no improper disclosure occurs. The delivering party shall indicate the location from which each document was retrieved (for example, "exhibit 5 to defendant's memorandum in opposition to —— motion,") so that the third party may identify the document for the court. The delivering party shall also send a copy of this decision to the third party.

lifted from all requested documents (including those described in footnote 9) other than those to merit continued confidentiality.

IT IS SO ORDERED.

DATED: February 9, 1984.

/s/ William P. Gray
WILLIAM P. GRAY
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MDL-150 WPG

ALL CASES

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION

MEMORANDUM TO COUNSEL

[Filed April 6, 1984]

The order implementing my Memorandum of Decision of February 9, 1984, regarding declassification of documents will be filed concurrently with this memorandum. You will note the provision in the order for a stay pending appeal.

In my view, the instant order is appealable under the collateral order doctrine. The order and decision of February 9 are more than an implementation of the umbrella protective order in this case. First, I acknowledge that my current order, at least in some respects, virtually stands Judge Clarie's order on its head. The latter leaves much discretion to the party seeking confidentiality, and it imposes upon the party seeking declassification the burden of accomplishing removal of the confidential designation. The current order, and the decision upon which it is based, shift the burden to the party that seeks to retain the classification. Such shifting of burden occurs long after the parties have submitted papers in reliance upon the protective order.

Of course, I did rely on the protective order to the extent that it contemplates that the party making a confidential designation does so only when the document contains a trade secret or is otherwise commercially sensitive. Second, the decision and order involve the question of whether, and to what extent, the public has a right of access to civil pretrial materials, and the question of the proper balance between such access interests and the interests in confidentiality.

Naturally, I believe that the order, which implements the decision and initiates the balancing process, is appropriate. However, I recognize that it raises important and controversial issues. As the February 9 decision acknowledges, there is little judicial authority concerning this matter, and the order involves more than the exercise of judicial discretion. *Cf. Cohen v. Beneficial Indus. Loan Co.*, 337 U.S. 541, 547 (1949).

It seems to me that the propriety of the current order should be authoritatively resolved before the defendants are obliged to undertake the laborious and expensive tasks of reviewing the many documents involved, assessing their sensitivity, and briefing the court on the continuing need for confidentiality. If the current order is not stayed now and is adjudged on appeal to be wrong, the above expressed undertaking will have been wasted. If the order is stayed now and upheld, the rationale upon which it is based will have been vindicated, and there would be little justification for a second appeal of a later decision concerning declassification of particular documents. *Cf. Iowa Beef Processors v. Bagley*, 601 F.2d 949 (8th Cir.) *cert. denied*, 99 S. Ct. 1977 (1979).

It is my opinion that the decision on appeal of the current order implementing the February 9 decision will finally resolve some very important issues in this litigation. If the Court of Appeals does not deem the current order to be an appealable collateral order, I submit this

memorandum as a certificate in support of an interlocutory appeal under 28 U.S.C. § 1292. If neither of these forms of appeal is acceptable to the appellate court, I would welcome consideration of mandamus as a means of giving guidance to this court.

DATED: April 6, 1984.

/s/ William P. Gray
WILLIAM P. GRAY
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MDL No. 150 WPG
(All Cases)

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION

MEMORANDUM AND ORDER RE EFFECT OF STAY

[Filed September 6, 1984]

This matter originally came before this Court as an application by defendants for a temporary restraining order restraining intervenor Dow Jones & Company, Inc. ("Dow Jones" or "intervenor") from receiving or obtaining any presently-sealed discovery documents. At the hearing, the parties entered into a "standstill" stipulation treating Judge Gray's April 6th stay of his declassification order (the "Stay") as being in effect, pending the hearing on defendants' request for a preliminary injunction. Intervenor, in turn, has filed a motion for access to sealed documents, *i.e.*, to unseal them. Responding to Dow Jones' First Amendment arguments, defendants now seek an order that the Stay "will remain in effect."

By his April 6, 1984 order, after due consideration of the issues, see Memorandum of Decision entered Feb. 10, 1984, Judge Gray set forth the procedure under which documents subject to seal under the protective order in

MDL No. 150 would be subject to declassification. The Stay, which is paragraph (6) of that order, provides:

> "This order is hereby stayed for thirty days, and thereafter pending appellate review if defendants shall have joined in a request to the Court of Appeals for an expedited review."

Apparently, the condition of expedited review has been met. Although not specifically cited, Judge Gray was clearly exercising his discretion under Fed. R. Civ. P. 62. At least three appeals were taken from this order to the Ninth Circuit. In No. 84-5824 and No. 84-8076 the appeals of Dow Jones were, respectively, dismissed and denied. Defendants' appeal from the declassification order, No. 84-5878, apparently remains pending. Intervenor also filed a petition for writ of mandamus against this Court, No. 84-7262, in which the only remedy apparently sought was to vacate the stay. By order filed June 19, 1984, the petition was granted and the Stay vacated (the "Mandamus Order").[1] It is not contested that defendants filed a timely petition for rehearing, within the meaning of Fed. R. App. P. 40(a). The Court of Appeals has not acted on the petition for rehearing or suggestion for rehearing en banc. Neither has it acted on defendants' emergency motion for clarification of jurisdiction and for stay pending appeal, which was subsequently filed.

The basic issue here is whether that filing postponed the effectiveness of the Mandamus Order under Fed. R. App. P. 41(a) and, if not, whether this Court can and should continue the Stay.

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[1] Because it is of some importance, a copy of the Mandamus Order, together with a page from the District Court docket indicating its receipt is appended hereto. As can be seen, the Clerk's certification bears the notation, "This certification constitutes the mandate of the Court."

At the hearing on August 23, 1984, this Court was concerned with its jurisdiction to hear this dispute and whether it was being asked to render an advisory opinion. On further reflection, however, and in light of further facts now known to it[2] and the briefing of the parties, although some doubt remains, I conclude that the district court has jurisdiction to act.

In support of their position that the Stay remains in effect, defendants rely on Fed. R. App. P. 41(a)'s provision that, "The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court."[3] Rule 41(a) also provides that "A certified copy of the judgment . . . shall constitute the mandate, unless the court directs that a formal mandate issue." No such direction was made here; therefore, the Mandamus Order itself is the mandate. Further, I am forced to conclude that the sentence in Rule 41(a) relied on does not apply here, because the Court has "otherwise ordered," by the Clerk's certification thereon that "This certification constitutes the mandate of the Court." Thus, the mandate has issued and has been docketed in the District Court.

It is customary practice by the Ninth Circuit Clerk in mandamus cases to have the order serve as the mandate.[4] Thus, what happened in this case conforms with custom.

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[2] Some of the facts alluded to here are not in the district court record. I have concluded, however, that judicial notice may be taken of such facts. Fed. R. Evid. 201(b)(2) & (c). They are facts pertaining to the practice of the Clerk of the Ninth Circuit and his actions in this matter. The accuracy of these facts are equally determinable by the Court of Appeals.

[3] I assume, *arguendo*, that Rules 40 & 41 apply to mandamus proceedings. Fed. R. App. P. 1.

[4] Defendants' contend that this customary practice is "unauthorized and invalid". This Court exercises no supervisory power over the Clerk of the Ninth Circuit; the argument is directed to the wrong court and will not be considered.

However, this Court is also given to understand that issuance of the mandate in this case was a clerical error.[5] Nevertheless, given the fact that the mandate has issued, and in the absence of any subsequent order recalling the mandate, it is at least arguable that appellate court jurisdiction has been relinquished and the trial court's jurisdiction to act fully restored.

However, because a petition for rehearing is pending, I cannot be certain that the Court of Appeals intended to relinquish its jurisdiction, *i.e.*, it is at least plausible that issuance of the mandate was a clerical error which the Court of Appeals should be given an opportunity to correct. Therefore, in the alternative, this appears to be a proper case in which this Court should act to protect the Circuit's appellate jurisdiction. *In re Thorp*, 655 F.2d 997, 998 (9th Cir. 1981). Appellate jurisdiction in this case involves both rehearing on the Mandamus Order and the possibility that failure to act will moot the appeal in No. 84-5878.[6]

Since I conclude, arguably at least, that the District Court has jurisdiction to act in the premises and that such action is necessary and not advisory, for the rea-

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[5] Another obvious error on the face of the Mandamus Order is its "Attest" date of May 19, 1984; a date that predates the Motions Calendar date noted thereon of 5/28/84. No doubt the intended "Attest" date was June 19, the date the order was filed.

[6] Appellate jurisdiction also is involved in another sense. The usual writ of mandamus (if there is such a thing) is in the form of a command to the respondent court to take some specified action, here to vacate the stay. In contrast, the form of the Mandamus Order is to vacate the stay directly. Undoubtedly, that is because a District Court Stay under Fed. R. Civ. P. 62, is action on a matter primarily within the Court of Appeals' jurisdiction under Fed. R. App. P. 8. *See* Fed. R. Civ. P. 62(g). Part of the ambiguity in these proceedings has arisen because intervenor chose to file a separate mandamus proceeding, rather than a motion in defendants' appeal to vacate the stay.

sons stated above, I proceed to exercise my discretion to do so.

The only issue here is whether the *status quo*[7] should be maintained in whole or in part and, if so, for how long.[8] I further act on the premise that issuance of the mandate (in the form of the Mandamus Order) was inadvertent or a clerical error.[9] If such were the case, then obviously the Circuit did not intend that the matter be mooted without opportunity to act on the petition for rehearing.[10]

Judge Gray was careful to detail his concern that the opportunity for authoritative appellate resolution of the declassification order be preserved. Memorandum to Counsel filed Apr. 6, 1984. I seek by this order to do no more, only to preserve to the extent necessary the *status quo*, pending a determination by the Court of Appeals of the petition for rehearing or its order that the Mandamus Order was, indeed, intended to be final forthwith. I seek only to insure that the Court of Appeals' jurisdiction is not inadvertently frustrated.

For the foregoing reason, IT IS ORDERED:

1. The sixty (60) day period and the seventy (70) day period of paragraph (3) of the Order signed and

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[7] The *status quo* under the Stay has continued. Under the Stipulation and Order of Aug. 23, 1984, all parties have continued to treat the Stay "as being in full force and effect."

[8] I fail to perceive any First Amendment issue, apart from the issues involved in underlying stay, that should not, on balance, give way to the Court of Appeals' opportunity to consider the petition for rehearing before the issue is mooted.

[9] My action here is only to allow the Court of Appeals the opportunity to correct such clerical error, if any there be. If I am mistaken, it will be a simple matter for a motions panel to vacate this order and to order that the mandate issue forthwith.

[10] Although it is true that the appeal in No. 84-5878 would also be mooted, it would appear that the Mandamus Order was issued on the likely assumption that that would be its probable result.

filed herein on April 6, 1984, and entered on April 12, 1984 (the "Declassification Order") shall commence to run as of the date of this order.

2. Declassification of documents identified in paragraph (1) of the Declassification Order, but submitted for further protection pursuant to paragraphs (3) or (4), thereof, shall be stayed in accordance with paragraph (4), below.

3. Any action by the Court pursuant to paragraph (5) of the Declassification Order shall be stayed in accordance with paragraph (4), below.

4. The order in paragraph (1), above, and the stay in paragraphs (2) and (3), above, shall remain in effect until seven (7) days after disposition by the Court of Appeals of the petition for rehearing of real parties in interest in No. 84-7262, Fed. R. App. P. 41(a), unless otherwise ordered by said Court or a judge thereof. Fed. R. App. P. 8(a).

Dated: Sep. 6, 1984

/s/ A. Wallace Tashima
A. WALLACE TASHIMA
United States District Judge

C-7

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-7262

DC# MDL-150 WPG
Central California

DOW JONES AND COMPANY, INC.,
Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

STATE OF ARIZONA; STATE OF CALIFORNIA, *et al.*,
Real Parties in Interest.

ORDER

[Filed June 19, 1984]

Before: SCHROEDER, ALARCON and FERGUSON, Circuit Judges

The petition for a writ of mandamus is granted. The stay pending appeal of the disclosure procedure ordered by the district court is vacated.

A TRUE COPY
ATTEST May 19, 1984
PHILLIP B. WINBERRY

by: /s/ Verna Trouis
Deputy Clerk

This certification constitutes the mandate of the Court.

[Lodged June 21, 1984]

[Appeals Update Sheet Completed By 6-21-81]

MoCal 5/28/84

Date	PROCEEDINGS
	LODGED EXH OF DONALD N. GRAHAM TKN 1-26-82
	LODGED DEPO OF KENNETH E. ALLEN TKN 5-28-81 w/exh
	LODGED DEPO OF ALBERT G. LAVERTY TKN ON 1-14-82 w/exh
	LODGED DEPO OF ANTHONY TURANO Jr TKN on 2-3-82 w/exh
	LODGED DEPO OF HERBERT C. TENNY TKN ON 3-11-82 Vol 1A
	LODGED DEPO OF HERBERT C. TENNY TKN on 3-11-82 Vol IB
	LODGED DEPO OF HERBERT C. TENNY TKN ON 3-12-82
	LODGED EXH OF HERBERT C. TENNY TKN ON 3-11-82
	LODGED DEPO OF ARTHUR J. KOHLER TKN ON 2-1-82
	LODGED EXH OF ARTHUR J. KOHLER TKN ON 2-1-82
	LODGED DEPO OF C. NICHOLAS TINGLEY TKN ON 1-20-82 Vol 1A
	LODGED DEPO OF C. NICHOLAS TINGLEY TKN ON 1-20-82 Vol 1B
	LODGED DEPO OF C. NICHOLAS TINGLEY TKN ON 1-28-82 Vol 2A
	LODGED DEPO OF C. NICHOLAS TINGLEY TKN ON 1-28-82 Vol 2B
	LODGED EXH OF C. NICHOLAS TINGLEY TKN ON 1-20-82
	LODGED DEPO OF LINN M. KELLEHER TKN ON 12-18-81

Date		PROCEEDINGS
		LODGED DEPO OF LINN M. KELLEHER TKN ON 12-18-81
		LODGED EXH OF LINN M. KELLEHER TKN ON 12-18-81
		LODGED DEPO OF HAROLD L. MANTHEI TKN ON 12-15-81 Vol IA
		LODGED DEPO OF HAROLD L. MANTHEI TKN ON 12-15-81 Vol IB
		LODGED DEPO OF HAROLD L. MANTHEI TKN ON 12-17-81 Vol 2
		LODGED EXH TKN OF HAROLD L. MANTHEI TKN ON 2-15-81
		LODGED DEPO OF LAWRENCE GABRIEL RAWL TKN ON 2-8-82
		LODGED DEPO OF LAWRENCE GABRIEL RAWL TKN ON 2-8-82
		LODGED EXH OF LAWRENCE GABRIEL RAWL TKN 2-8-82
		LODGED EXH OF LAWRENCE GABRIEL RAWL TKN ON 2-8-82
6-8-84	sb	Fld motn fr lv propound disc req regarding April 1973 meeting in the Bahams & suppting memo
6-18-84	sb	Fld deft opp to pltf motn fr bifurcation of issue fr separate trials
6/21/84	clh	LODGED cc of ORD frm 9th Cir C/A Denying the petn to appeal.
	clh	LODGED cc of ORD frm 9th Cir. C/A Granting the petn for a writ of mandamus. The stay pending appeal of the disclosure procedure ordered by the district court is Vacated.

Date		PROCEEDINGS
	clh	LODGED cc of ORD frm 9th Cir. C/A Granting the deft'-s motn to dismiss. (CA 84-5824)
6-28-84	cy	7. Fld def's opp to mots fr leave to propound discov requests
7-5-84	cy	8. Fld plt's reply to def's opp to mots fr leave to propound discov requs
7-6-84	cy	9. Fld plt's ntc of mtn fr prelim approv of settlements & suppt memo
7-9-84	cy	10. Fld plt's suppl. memo in opp to def's mtn fr summ judgmt—UNDER SEAL
7-9-84	cy	11. Fld. reply memo in suppt of def's mts to exclude plt's damage studies &

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-5824

DC# MDL 150 WPG
Central California

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION

THE CITY OF LONG BEACH, as Trustee for the State of California and the State of California as Beneficiary, *et al.*,
Plaintiffs-Appellees,

and

DOW JONES & COMPANY, INC.,
Intervenor-Appellant,

vs.

STANDARD OIL CO. OF CALIFORNIA, *et al.*,
Defendants-Appellees.

ORDER

[Filed June 19, 1984]

Before: SCHROEDER, ALARCON and FERGUSON, Circuit Judges

The defendants' motion to dismiss is granted. The appellant does not challenge any portion of the district court order that finally determines the rights of a party.

A TRUE COPY
ATTEST June 19, 1984

PHILLIP B. WINBERRY
Clerk of Court

by: /s/ P. Williams
Deputy Clerk

[Appeals Update Sheet Completed By 6-21-84]

[Lodged June 21, 1984]

MoCal 5/28/84

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-8076

DC# MDL-150 WPG
Central Division

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION

ORDER

[Filed June 19, 1984]

Before: SCHROEDER, ALARCON and FERGUSON, Circuit Judges

The petition for permission to appeal is denied. Review of the district court order of April 6, 1984, would not materially advance the ultimate termination of the litigation.

A TRUE COPY
ATTEST June 19, 1984

PHILLIP B. WINBERRY
Clerk of Court

by: /s/ Sigmon Zielter
Deputy Clerk

MoCal 5/28/84

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MDL Docket No. 150 (WPG)

ALL CASES

IN RE COORDINATED PRETRIAL PROCEEDINGS IN
PETROLEUM PRODUCTS ANTITRUST LITIGATION

STIPULATION AND ORDER

[Filed August 22, 1984]

Defendants identified below ("Defendants"), all plaintiffs and Intervenor Dow Jones & Co., Inc. ("Dow Jones") hereby stipulate and agree as follows:

1. Pending disposition of the application for preliminary injunction filed by defendants on August 22, 1984, defendants, plaintiffs and intervenor Dow Jones will treat the stay of Judge William P. Gray's Order dated April 6 and entered on April 12 which is set forth in paragraph 6 of said Order as being in full force and effect and fully applicable to defendants, plaintiffs and intervenor Dow Jones.

2. The Memorandum filed on August 22, 1984 by defendants will be treated as defendants opening brief in support of their application for preliminary injunction.

3. Plaintiffs and Dow Jones will have until 5:00 p.m. Wednesday, August 29, 1984 to file and serve by hand a brief in opposition to the application for preliminary injunction.

4. Defendants will have until 5:00 p.m., Tuesday, September 4, 1984 to file and serve by hand a reply brief in support of the application for preliminary injunction.

5. Hearing on the application will take place at 9:30 a.m. on Thursday, September 6th or as soon thereafter as is convenient for the court, in Courtroom No. 6.

Dated: August 23, 1984

DONOVAN LEISURE NEWTON
& IRVINE

/s/ Vincent Tricarico
VINCENT TRICARICO

DONOVAN LEISURE NEWTON
& IRVINE
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Los Angeles, California 90071
Telephone: (213) 253-4000

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Mobil Oil Corporation and
on behalf of defendants

Atlantic Richfield Company
Exxon Corporation
Gulf Oil Corporation
Shell Oil Company
Phillips Petroleum Company
Standard Oil Company
of California
Texaco Inc.

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KINSELLA, BOESCH, FUJIKAWA
& TOWLE

/s/ Philip W. Boesch, Jr.
PHILIP W. BOESCH, JR.

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& TOWLE
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#1600
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Telephone: (213) 552-9496

Attorneys For and On Behalf
of Intervenor Dow Jones
& Co. Inc.

The above stipulation is SO ORDERED

Dated: August 23, 1984

/s/ Wallace Tashima
WALLACE TASHIMA
U.S. District Court Judge

STATUTORY APPENDIX

STATUTORY APPENDIX

TITLE 28 UNITED STATES CODE

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

§ 2071. Rule-making power generally

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court.

§ 2077. Publication of rules; advisory committees

(a) The rules for the conduct of the business of each court of appeals, including the operating procedures of such court, shall be published. Each court of appeals shall print or cause to be printed necessary copies of the rules. The Judicial Conference shall prescribe the fees for sales of copies under section 1913 of this title, but the Judicial Conference may provide for free distribution of copies to members of the bar of each court and to other interested persons.

(b) Each court of appeals shall appoint an advisory committee for the study of the rules of practice and internal operating procedures of the court of appeals. The advisory committee shall make recommendations to the court concerning such rules and procedures. Members of the committee shall serve without compensation, but the Director may pay travel and transportation expenses in accordance with section 5703 of title 5.

(Added Pub.L. 97-164, Title II, § 208(a), Apr. 2, 1982, 96 Stat. 54)

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 21. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs

(b) Denial; Order Directing Answer. If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges named respondents and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the judge or judges named respondents do not desire to appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases.

Rule 34. Oral Argument

(a) In General; Local Rule. Oral argument shall be allowed in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. Any such local rule shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opinion, oral argument should be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard:

Oral argument will be allowed unless

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Rule 40. Petition for Rehearing

(a) Time for Filing; Content; Answer; Action by Court if Granted. A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of Petition; Length. The petition shall be in a form prescribed by Rule 32(a), and copies shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs. Except by permission of the court, or as specified by local rule of the court of appeals, a petition for rehearing shall not exceed 15 pages.

Rule 41. Issuance of Mandate; Stay of Mandate

(a) Date of Issuance. The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of

the judgment and a copy of the opinion of the court, if any, and any direction as to costs shall constitute the mandate, unless the court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(b) Stay of Mandate Pending Application for Certiorari. A stay of the mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the court of appeals a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

Rule 45. Duties of Clerks

(c) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of entry by mail upon each party to the proceeding together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.

Rule 47. Rules by Courts of Appeals

Each court of appeals by action of a majority of the circuit judges in regular active service may from time

to time make and amend rules governing its practice not inconsistent with these rules. In all cases not provided for by rule, the courts of appeals may regulate their practice in any manner not inconsistent with these rules. Copies of all rules made by a court of appeals shall upon their promulgation be furnished to the Administrative Office of the United States Courts.

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Rule 3. Time and Place of Hearings

(a) Classes of Cases to be Submitted Without Oral Argument. Pursuant to Rule 34(a), Federal Rules of Appellate Procedure, there is hereby established a class of cases to be submitted without oral argument. There may be placed in this class any appeal, petition for original writ, or petition for review or enforcement of an administrative order in which a three judge panel of this court is of the unanimous opinion that:

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Oral argument will be allowed in each case absent a specific finding pursuant to this rule that oral argument is not needed.

When a case has been classified by the court for submission without oral argument, the clerk shall give the parties notice in writing of such action. The parties shall have seven days from the date of the clerk's letter

in which to file a statement setting forth the reasons why, in the opinion of the parties, oral argument should be heard.

(b) Designation in General. Appeals, applications for original writs, and petitions to review or enforce orders or decisions of administrative agencies may be heard at any session of the court in the circuit, as designated by the court.

Rule 22. Delegation of Authority to Act on Motions

With the approval of the Court, the Chief Judge may delegate in writing to the Clerk, or to a designated staff attorney acting as a deputy clerk for this purpose, authority to act on specified motions subject to disposition by a single judge, upon the following conditions: (1) the motion is unopposed, and (2) the order entered on the motion does not dispose of the appeal. The order disposing of the motion is expressly subject to reconsideration by a judge of the Court if exception is received within ten (10) days of the entry of the order.

The Clerk will have the authority to grant oral extentensions of time to file the transcript in civil appeals. These extensions will be for no more than fourteen (14) days and will be subject to reconsideration if opposition is filed by either party within ten (10) days.

APPENDIX OF AFFILIATED COMPANIES

AFFILIATED COMPANIES

Atlantic Richfield Company

Acerlan, S.A.
Alyeska Pipeline Service Company
Anaconda-Ericsson Inc.
Anamax Mining Company
Arilan, S.A. de C.V.
Atlantic Richfield de Mexico, S.A. de C.V.
Badger Pipeline Company
Bingham Development Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
Centroamericana de Cobre, S.A.
Cobre de Hercules, S.A.
Cobrecel, S.A. de C.V.
Colonial Pipeline Company
Compania de Petroleo Ganso Azul, Ltda.
Compania Minera Dos Republicas, S.A. de C.V.
Compania Minera Kappa, S.A.
Compania Minera Penacobre, S.A.
Cook Inlet Pipe Line Company
Cupro San Luis, S.A. de C.V.
Delaware Bay Transportation Company
Dexter de Mexico, S.A.
Dixie Pipeline Company
East Texas Salt Water Disposal Co.
Eisenhower Mining Company
Empresa de Comercio Exterior Mexicano, S.A. de C.V.
Energy Transportation Systems, Inc.
Fip, S.A.
Flower Street Limited
F.T.L. Company Limited
Gravity Adjustment, Inc.
Griffith-Consumers Company
Hardy Oil Company
Hydrokem Performance Chemicals Company
Imperial Eastman de Mexico, S.A.

Impulsora De Cobre, S.A. de C.V.
Industrias Nacobre, S.A. de C.V.
Industrias Tecnos, S.A. de C.V.
Inval, S.A.
Iricon Agency Ltd.
Kenai Pipe Line Company
Kronos, Computacion y Teleproceso, S.A. de C.V.
Kuparuk Transportation Company
Las Quintas Serenas Water Company
Lavan Petroleum Co.
Lingobronce, S.A.
Magnaval, S.A.
Manguera Flex, S.A. de C.V.
Manufacturera Mexicana De Partes Para Automoviles, S.A. de C.V.
Mayflower Mining Company
R. W. Miller (Holdings) Limited
Minera Anaconda Limitada
Montoro, Empresa Para La Industria Quimica
Nacional de Cobre, S.A.
New Bingham Mary Mining Company
Nihon Oxirane Company, Ltd.
Oil Shippers Service, Inc.
P. T. Arutmin Indonesia
Panaval, S.A.
Park Cummings Mining Company
Park Premier Mining Company
Participaciones Mexicanas, S.A. de C.V.
Patten Mining Company
Platte Pipe Line Company
Productos Especiales Metalicos, S.A.
Servicios Industriales Nacobre, S.A.
Sinclair Venezuelan Oil Company
Smoke House Copper Mining Company
Solvamex, S.A. de C.V.
Swecomex, S.A.
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company

Trans Mountain Oil Pipe Line Company
Tubos Flexibles, S.A.
Union de Credito Industrial Vallejo, S.A.
The Walworth Company
West Mayflower Mining Company
William Prym de Mexico, S.A.

Gulf Oil Corporation

A/S Jargul
A/S Jargul and Co. K/S
AB Djurgardsberg
Adela Investment Company, S.A.
Allied-General Nuclear Services
Andogas S.A. (Switzerland)
Asia Polymer Corp.
Autobahn-Raststaette Wuerenlos AG
China Gulf Oil Company Limited
Chinhae Chemical Company, Ltd.
Colonial Pipeline Company
Delaware Bay Transportation Company
Det Gronlandske Olieaktieselskab
Dixie Pipeline Company
Emery Joint Venture
Ethyleen Pijpleiding Maatschappij (Belgium) S.A.
Ethyleen Pijpleiding Maatschappij (Nederland) B.V.
Explorer Pipeline Company
Forenade Svenska Oljeimportorers AB
Gulf Canada Limited
Gulf Oil Canada Limited Associated Companies
Gulf Oil Corporation Erisa
Gulf Oil Terminals (Ireland) Limited
Gulf Oil Zaire S.A.R.L.
Harshaw - Byrce & Co. Pty. Ltd.
Harshaw - Juarez S.A. de C.V.
Harshaw - Murata Kabushiki Kaisha
Harshaw Galvanotecnia S.A.
Harshaw Quimica Ltda.
Hochtemperatur Reaktorbau GmbH

Insco Holding & Finance Company N.V.
Keydril (Nigeria) Limited
Kuwait Oil Company Limited
Laurel Pipe Line Company
Mainline Pipelines Limited
Mid-Valley Pipeline Company
Midwest Carbide Corporation
North River Energy Company
Oil Shippers Service, Inc.
Oklahoma Nitrogen Company
Paloma Pipe Line Company
Pembroke Capital Company
Pembroke Cracking Company
Petrosil Oil Company Limited
Plastigama, S.A.
Plastijal Sociedad Anonima
Platte Pipeline Company
Pol Transport AB
Pyropower Corporation
Raffinerie De Cressier S.A.
Rio Blanco Oil Shale Partnership
Sarni S.P.A. - Refining
Solvent Refined Coal International, Inc.
Solvo Finanzierungs-Und Beteiligungs AG
Sunrise International Company Limited
Svensk Petroleum Administration A.B.
Svensk Petroleum Largring Tre A.B.
Svenska Petroleum Forvalting A.B.
Taita Chemical Corporation
Valley Pines Associates
Venezuela Gulf Refining Company
West Texas Gulf Pipe Line Company
Standard Oil Company of California

Mobil Oil Corporation

AB Djurgardsberg
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.

Adria-Wien Pipeline Gesellschaft m.b.H.
AIMCO (ALPHA) Shipping Company
AIMCO (Blasbjerg) Limited
AIMCO (OMEGA) Shipping Company Ltd.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Chemie GmbH
AK Chemie GmbH & Co. KG
Akauma Rekisei Kogyo Kabushiki Kaisha
Alexandroupolis Petroleum Installation S.A.
Allied Asphalts Limited
Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama A.S.
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Ammenn GmbH
Ankara Gaz Satis Anonim Sirketi
Arabian American Oil Company
Arabian Energy Company Limited, The
Arabian International Maritime Company Limited
Arabian International Maritime Company
The Arabian Petroleum Supply Company (S.A.)
Arabian Shipping & Trading Company S.A.
Arabian Trading Company S.A.
Aral Aktiengesellschaft
A/S Fjellvegen
A/S Kongens Plass I
A/S Moretral
Ammenn GmbH
The Associated Octel Company Limited
Associated Octel Company (Plant) Limited
ATAS-Anadolu Tasfiyehanesi Anonim Sirketi
Atlas Sahara S.A.
Australian Synthetic Rubber Company Limited
Autobahn-Betriebe Gesellschaft m.b.H.
Aviation Fuel Services Limited
Aygaz Anonim Sirketi
B.V. Beheersmaatschappij MOBEM

Basrah Petroleum Company Limited
Bataan Refining Corporation
Bayerische Erdgasleitung GmbH
Bin Sulaiman Mobil Towers
Bayerische Mineral Industrie A.G.
Beer GmbH
Bear GmbH & Co.
Mineralol-Vertriebs-KG
Bostadsrattsforeningen Basunen, Malmo
Bostadsrattsforeningen Forarsatet, Orby
Bostadsrattsforeningen Silverskatten, Trelleborg
Bostadsrattsforeningen Skepparegarden, Norrkoping
Braamkey Investments (Proprietary) Limited
Brazos Heights Housing Incorporated
Brussels Airfuels Service S.C.
Buffalo River Improvement Corporation
Canners' Steam Company, Incorporated
Cansulex Limited
Canyon Reef Carriers, Inc.
Cartoenvases Valencia, S.A.
Carton de Colombia, S.A.
Carton de Venezuela, S.A.
Cartones Nationales, S.A.
Celmisia Shipping Corporation
Celulosa y Papel de Columbia, S.A.
Central African Petroleum Refineries (Pvt) Limited
Central Kagaku Kabushiki Kaisha
Cercera S.A.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Nenryo Gas Kabushiki Kaisha
Colombianos Distribuidores de Combustibles, S.A. (CODI)
Columbianos Forestadores, S.A.
Colonial Pipeline Company
Comet-Brennstoffdienst GmbH
Commercial Polymers Pty. Ltd.
Commodore Maritime Company, S.A.
Compagnie Africaine de Transport Cameroun

Compagnie D'Entreposage Communautaire
Compagnie Rhenane de Raffinage
Compagnie Senegalaise des Lubrifiants (C.S.L.)
Compania Colombiana de Empaques Bates, SSA
Compania Colombiana De Forestacion S.A.
Compania de Lubricants de Chile Limitada
(Copec-Mobil Ltda.)
Compania Mexicana de Especialidades Industriales,
S.A. de C.V.
Consortium Raymond Duez
Constructora Calle 70, S.A.
Cook Inlet Pipe Line Company
Corrugadora de Carton, S. A.
Cyprus Petroleum Refinery Limited
D. Muhlenbruch GmbH
D. Muhlenbruch GmbH & Co. KG
Dai Nippon Jushi K.K.
Dearborn Land Company
De. Ba. Industria Petrolifero
Depot Petrolier de Mourepiane
Depot Petrolier du Gresivaudan
Depot de Petrole Cotiers
Depots Petroliers de La Corse (DPLC)
Deutsche Pentosin-Werke GmbH
Deutsche Transalpine Oelleitung GmbH
Dicomi S.r.l.
Dixie Pipeline Company
Drivmedelscentralen AB
Dukhan Services Company
East Japan Oil Development Company Ltd.
Eastern Lease Company Ltd.
East Texas Salt Water Disposal Company
Emoleum (Asphalts) Limited
Entrepot Petrolier de Chambery
Entrepot Petrolier de Dijon
Entrepot Petrolier de Mulhouse (E.P.M.)
Entrepot Petrolier de Nancy
Entreprise Jean Lefebvre

Erdgas-Verkaufs-Gesellschaft mbH
Erdoel-Lagergesellschaft mbH
Erdoel-Raffinerie Neustadt GmbH & Co. oHG
Erdoelbetrieb Reitbrook
Erdoelraffinerie Gesellschaft mbH in Liquidation
Establissments Bouthenet
Ets. Le Goff
Ets. R. Saillard
Faavang Autoverksted A/S
FACEL
Fairwind Maritime Company, S.A.
Felix Oil Company
Fibril, S.A.
Fibras Internacionales de Puerto Rico, Inc.
Filtroleo-Sociedade Portuguesa de Filtros Lda.
Filtros De Costa Rica S.A.
Finsbury Printing Limited
First Eastleigh No. 163 (Proprietary) Limited
Fountain Garage (East Park) Ltd.
Fountain Garage (Meadowhead) Ltd.
Fountain Garage (Mercury) Ltd.
Fountain Garage (Newbury Park) Ltd.
Fountain Garage (Stirchley) Ltd.
Frome-Broken Hill Company Proprietary Limited
Fruehmesser Mineraloelhandels GmbH & Co. KG
Fruehmesser GmbH
Fuso Operations Kabushiki Kaisha
Futuro Enterprises (Christchurch) Ltd.
Futuro Homes (N.Z.) Ltd.
Gaz Aletleri Anonim Sirketi
Geomines-Caen
Geovexin
Ghana Bunkering Services Limited
Goteborgs Branslesortering AB
Groupement Immobilier Petrolier G.I.P.
Groupement Petrolier Aviation G.P.A.
Groupement Petrolier De Brest (GPB)

Handelmaatschappij Hugenholtz & Co. B.V.
H. van der Heijden Service Stations B.V.
Heizoel-Handelsgesellschaft mbH
Hellas Gas Storage Company S.A.
Home Counties Petroleum Products Limited
Hormoz Petroleum Company
Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt
Inmunizadoras Unidas, S. A.
Industria De Carbon Del Valle Cauca, S.A.
Industria Interamericana De Filtros Ltda. (INTERFIL)
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions Limited
Iraq Petroleum Transport Company Limited
Iside, S.p.A.
Istanbul Petrol ve Makine Yasglari Limited Sirketi
Japan Airport Fueling Service Co. Limited
Japan Solar Energy Co., Ltd.
J.E.C.O.P.
K.D. Keysers Investments (Proprietary) Limited
K.K. Sankyo Plastics
K.K. Toresen
Kanto Kyguns Sekiyu Hambai K.K.
Kanto Oil Pipeline Co., Ltd.
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keihin Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sea-Berth Company, Limited
Kettleman North Dome Association
Klaus Koehn GmbH
Klaus Koehn GmbH & Co. Mineraloel KG
Kobe Port Service Kabushiki Kaisha
Kurt Ammenn GmbH & Co. K.G.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Sekiyu Kabushiki Kaisha
Kyokyto Petroleum Overseas, Ltd.
Kyokuto Sekiyu Kogyo Kabushiki Kaisha

Les Supermarches De Cote D'Ivoire
Likit Petrol Gazi ve Yakit Ticaret A.S.
Lobe Chemie Gesellschaft mbb
Lubricantes del Sur, S.A.
Marceaux & Cie
Matco Tankers (U.K.) Limited
Maury Manufacturing Company, Inc.
Mediterranean Refining Company
Meentzen & Franke GmbH & Co.
Mertl GmbH
Mobil Ami, S.A.
Mobil Atlas Sociedad Anonima de Capital Variable
Mobil Comercio, Industria e Servicos Ltda.
Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi
Mobil Korea Lube Oil Industries Inc.
Mobil Motor Rest AG
Mobil Nile Oil Company
Mobil Oil Gabon
Mobil Oil Ghana Limited
Mobil Oil Maroc
Mobil Oil Nigeria Limited
Mobil Oil Nord-Africaine
Mobil Oil Portuguesa, S.A.R.L.
Mobil Tunisie
Mosul Petroleum Company Limited
Motel Rest SA
Mt. Marrow Blue Metal Quarries Pty.
Ndola Oil Storage Company Limited
Near East Development Corporation
New Zealand Refining Company Limited, The
New Zealand Synthetic Fuels Corp. Ltd.
New Zealand Synthetic Fuels (Housing) Corporation Limited
Nichimo Oil (Bermuda) Co., Ltd.
Nippon Unicar Company Limited
Norddeutsche Erdgas-Aufbereitungs GmbH
Nordic Storage Company Ltd.

Nottingham Gas Limited
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
N.V. Socony-Standard-Vacuum Oil Company
Occidental de Empaques, Ltda.
Octel Associates
Octel S.A.
Oil Kol (Proprietary) Limited
Oil Service Company of Iran (Private Company)
Oldenburgische Erdoel Gesellschaft mit beschrankter Haftung
Olympic Pipe Line Company
Osage Pipe Line Company
P.T. Arun Natural Gas Liquefaction Company
P.T. Berau Coal
P.T. Stanvac Indonesia
Paloma Pipe Line Company
Pars Investment Corporation
P-6—Group B.V.
Pembalta Gas System No. 1 Ltd.
Pembalta Gas System No. 3 Ltd.
Pembalta Gas System No. 4 Ltd.
Pembalta Gas System No. 5 Ltd.
Pembalta Gas System No. 6 Ltd.
Perretti Petroli S.p.A.
Petrocab
Petrogas Processing Ltd.
Petroleum Development (Cyprus) Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petroleum Tankship Company Inc.
Petromin Lubricating Oil Company
Petromin Lubricating Oil Refining Company
Petromin-Mobil Yanbu Refinery Company Ltd.
Pipe Line Benal de La Goulette
Plegadizos para La Industria S.A.
Poly Oil Chimie (P.O.C.)
Prespak (Proprietary) Limited
Qatar Petroleum Company Limited
Qualbank, Inc.

Rainbow Pipe Line Company, Ltd.
Randhurst Corporation
Reforestadora Andina, S.A.
Reforestadora del Cauca, S.A.
Rhodes Petroleum Installation S.A.
Rivers Court Estates, Limited
Rohel-Aufsuchungs Gesellschaft mbH
Ruhrgas Aktiengesellschaft
S&M Pipeline Limited
Samarco (Alpha) Shipping Company
Samarco (Beta) Shipping Company
Sanwa Kasei Kogyo Kabushiki Kaisha
Sarni S.p.A.
Saudi Arabian Maritime Company
Saudi Can Company, Ltd., The
Saudi Chemical Industries Company Limited
Saudi Maritime Company Ltd.
Saudi Tankers Limited
Saudi Yanbu Petrochemical Company
Schubert Kommanditgesellschaft
Segher de Mexico, S.A. de C.V.
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
SENERCO
Seram Societa per Azioni (S.p.A.)
Sierra Leone Petroleum Refining Company Limited, The
R. Simonnet & CIE
Sociedad Calle 67, Ltda.
Sociedade Portugal Marrocos SARL
Societa Italiana per l'Oleodotto Transalpino, S.p.A.
Societe Africaine de Raffinage
Societe Alfred Ott & Cie
Societe Belge de Transport par Pipeline S.A.
Societe Camerounaise des Depots Petroliers (S.C.D.P.)
Societe Camerounaise Equatoriale De Fabrication De Lubrifiants "S.C.E.F.L."
Societe Civile de Mustapha
Societe Civile Immobiliere Courcelles-Etoile

Societe Civile Immobiliere de Construction de 34 Avenue du General Leclerc a Boissy-St-Leger
Societe Civile Immobiliere de Construction "La Residence Brune"
Societe Civile Immobiliere du 10 Bd. de la Republique A La Garenne-Colombes
Societe Civile Immobiliere Kleber-Etoile
Societe Civile Immobiliere La Fontaine Saint Lucien
Societe Civile Immobiliere Mobil
Societe Dahomeenne d'Entreposage de Produits Petroliers
Societe d'Armement Fluvial et Maritime "SOFLUMAR"
Societe de Construction & de Gestion CB 12
Societe de Distribution Castelroussine (SODICA)
Societe de Gaz D'Oceanic (SOGADOC)
Societe de Manutention de Carburants Aviation (S.M.C.A.
Societe de Manutention de Carburants Aviation Dakar-Yoff
Societe de Manutention de Carburants Aviation de Tahiti (SOMCAT)
Societe de Maperialx d'Etancheite Pour Le Entreprises (Meple)
Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)
Societe d'Entreposage de San Pedro (SESP)
Societe d'Entreposage Petrolier au Burundi
Societe d'Habitations a Loyer Modere de la Seine Maritime
Societe des Bitumes et Cut-Backs du Cameroun
Societe Des Huiles Lemahieu
Societe de Pipe-Line Sud-Europeen
Societe Francaise Stoner-Mudge
Societe Gabonaise d'Entreposage de Produits Petroliers
Societe Gabonaise de Raffinage
Societe Industrielle des Asphaltes et Petroles de Lattaquie (Syrie) S.A.

Societe Jean Roussel S. A.
Societe Ivoirienne de Fabrication de Lubrifiants (S.I.F.A.L.)
Societe Ivoirienne de Raffinage
Societe Mauritanienne d'Entreposage de Produits Petroliers
Societe Malienne D'Entreposage (SME)
Societe Nationale de Raffinage (Sonara)
Societe Pizo De Formulation De Lubrifiants (PIZOLUB)
Societe Tahitienne de Depots Petroliers
Societe Tchadienne D'Entreposage de Produits Petroliers
Societe Togolaise d'Entreposage (STE)
Sonarep (South Africa) (Proprietary) Limited
SONEX
South African Oil Refinery (Proprietary) Limited
South Saskatchewan Pipe Line Company
South West Africa Road Binders (Proprietary) Limited
Statfjord Transport A.S.
Sydney Metropolitan Pipeline Pty. Ltd.
Syria Petroleum Company Limited
T.R. Miller Mill Company, Inc.
Tanklagergesellschaft Kohn-Bonn
Tecklenburg GmbH
Tecklenburg GmbH & Co. Energiebedarf K.G.
Texoma Pipe Line Company
Thailand Lubricant Products Limited
Thailand Solvent Products, Ltd.
Thums Long Beach Company
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Co., Ltd.
Tonen Energy International Corp.
Tonen Maintenance Kabushiki Kaisha
Tonen Sekiyu Kagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology Kabushiki Kaisha
Total Centrafricaine de Gestion (TOCAGES)
Toyoshina Film Co., Ltd.
Tradewind Maritime Co., S.A.

Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgas Umschlags-Lager-Und Transport Gesellschaft mbH
Turkish Petroleum Company Limited
Twifo Oil Plantations Ltd.
UBAG Unterflur Betankungsanlage Flughafen Zurich
Union Grafica, S.A.
United Kingdom Oil Pipelines Limited
W.A.G. Pipeline Pty. Ltd.
Wako Kasei Kabushiki Kaisha
Wakohjushi Kabushiki Kaisha
Walton, Gatwick Pipeline Company Limited
Werner Weidemann Mineraloelvertrieb G.m.b.H.
West Shore Pipe Line Company
Wilbelm Mertl GmbH & Co. KG
Wolverine Pipe Line Company
WSG, Warme Service GmbH
Wyco Pipe Line Company
Wymondham Oil Storage Co., Limited
Zaire Mobil Oil
Zaire Services Des Entreprises Petrolieres

Phillips Petroleum Company

Aero Oil Company
Acurex Corporation
Alyeska Pipeline Service Company
Canyon Reef Carriers Inc.
Chisholm Pipeline Company
Colonial Pipeline Company
Dixie Pipeline Company
East Texas Salt Water Disposal Company
Everglades Pipe Line Company
Explorer Pipeline Company
Great Yarmouth Port Labor Company Limited
Heat Transfer Research, Inc.

Industries Negromex, S.A. de C.V.
Kaw Pipe Line Company
Kenai LNG Corporation
Papago Chemicals, Inc.
Phillips Gas Supply Corporation
Phillips Pacific Chemical Company
Phillips Petroleum Toray, Inc.
Salk Institute Biotechnology/Industrial Assoc. Inc.
Seadock, Inc.
Seaway Pipeline, Inc.
Transatlantic Reinsurance
White River Shale Oil Corporation
Arctic LNG Transportation Company
Calatrava Empresa Para la Industria Petroquimica, S.A.
Canada Western Cordage Co., Ltd.
Cochin Refineries Ltd.
Compagnie Francaise du Carbon Black S.A.
DRISCO S.A. de C.V.
Insurance and Reinsurance Brokers (Bermuda) Limited
Iranian Marine International Oil Co.
Nordisk Philback AB
Norland GmbH Fur Grundbesitz Und Industrieulagen
Norpipe A/S
Norpipe Petroleum U.K. Ltd.
Norsea Gas A/S
Norsea Gas GmbH
Norsea Pipeline Ltd.
Oil Insurance Limited (New)
Petrochim
Phillips Carbon Black Co. (Pty.) Ltd.
Phillips Carbon Black Italiana S.p.A.
Phillips Carbon Black Limited
Phillips Imperial Petroleum Limited
Phillips Petroleum Singapore Chemicals (Private) Limited
Philmac Oils Limited
Philmac Panama Inc.

Plasticos Vanguardia S.A.
Polar LNG Shipping Corporation
Quimica Veneco C.A.
Renolit Fertighaus GmbH
Sevalco (Holdings) Limited
SPODCO Ltd.
Venezoil, C.A.
Western Desert Operating Petroleum Co.
Seralco Limited
Spodco-USA, Inc.
Trenwick Limited

Shell Oil Company

Basin Pipe Line System
Bullenbay Marine Services, N.V.
Business Development Corporation of North Carolina
Butte Pipe Line Company
Capline System
Capwood Pipe Line System
Cortez Capital Corporation
Crown-Shell Baytown Feeder Line System
Curacao Oil Terminal N.V.
Dixie Pipeline Company
East Texas Salt Water Disposal Company
Explorer Pipeline Company
First Harlem Securities Corporation
Fractionation Research, Inc.
George Newman & Company
Gravcap, Inc.
Heat Transfer Research, Inc.
Inland Corporation
LOCAP, Inc.
LOOP, Inc.

MESBIC Financial Corporation of Houston
Oil Companies Institute for Marine Pollution Compensation Limited
Oil Insurance Ltd.
Olympic Pipe Line Company
Ozark Pipe Line Company
Penn Central Corporation
Plantation Pipe Line Company
Rancho Pipe Line System
Royal Dutch Petroleum Company
Seadock, Inc.
Shell Petroleum, N.V.
The "Shell" Transport and Trading Company, Limited
Ship Shoal Pipe Line System
Thums Long Beach Company
United Scientific, Inc.
West Shore Pipe Line Company
WIDC
Wolverine Pipe Line Company

Texaco Inc.

Refineria Texaco de Honduras, S.A.
Texaco Agro-Industrial (Nigeria) Limited
Quimica Industrial "FIDES" S.A.
Texaco Canada Inc.
Public Fuel Transmission Systems Limited
Great Eastern Oil & Import Co. Limited, The
Texaco Norway A/S
Deutsche Texaco Aktiengesellschaft
Texaco Portugal Prospeccao e Producao, S.A.R.L.
Texaco Exploration Norway A/S
Texaco Gabon
Texaco Togo
Zaire-Texaco S.A.R.L.
Texaco Nigeria Limited
Texaco-Cities Service Pipe Line Company
Tadlaqaz S.A.
American Overseas Petroleum Limited

Bunkerservice Brunsbuttel GmbH
Societe Ivoirienne De Futs et D'Emballages (SIFEMBAL)
Societe Guineenne De Lubrifiants et D'Emballages (SOGUILUBE)
Caltex Petroleum Corporation
Australian Lubricanting Oil Refinery Limited
Phoenicia Oil Company S.A.L.
Sydney Metropolitan Pipeline Pty. Limited
Koa Oil Company, Limited
Mediterranean Refining Company
Nippon Petroleum Refining Company, Ltd.
Tokyo Tanker Company, Limited
Caltex Deutschland GmbH
Caltex Mediterranean Limited
Condea Chemie GmbH
Federated Pipe Lines Ltd.
Flexibox GmbH
LPG de Panama, S.A.
Pembroke Capital Company, Inc.
P.T. Caltex Pacific Indonesia
Petrogas, S.A.
Texaco Maroc
Societe Ivoirienne D'Avitaillements Portuaires (S.I.A.P.)
Bonafides Grundstueksverwaltunggesellschaft mbH & Co. Vermietungs KG
Bayswater Nominees Pty. Ltd.
Hunter Pipeline
Majik Markets
Caltex Australia Limited
Ful-Tex Euro Services Inc.
West Australian Petroleum Pty. Limited
Honam Oil Refinery Company, Limited
Korea Tanker Company Limited
Societe Ivoirienne D'Entrepasage De Produits Petroliers (S.I.E.P.P.)
Texaco Ghana Limited
Manafil Limited

CandT Orient Inc.
Badger Pipe Line Company
Bayonne Industries, Inc.
Canyon Reef Carriers, Inc.
Colonial Pipeline Company
Coltexo Corporation
Dixie Pipeline Company
Explorer Pipeline Company
Felix Oil Company
Kaw Pipe Line Company
Laurel Pipe Line Company
LOCAP Inc.
LOOP Inc.
Olympic Pipe Line Company
Portland Pipe Line Corporation
Texas-New Mexico Pipe Line Company
THUMS Long Beach Company
West Shore Pipe Line Company
Wolverine Pipe Line Company
Wyco Pipe Line Company
Aircraft Fuel Supply B.V.
Airport Refueling Services S.p.A.
Aktiebolaget Svensk Petroleumlagring
Alberta Products Pipe Line Ltd.
Arabian American Oil Company
Associated Octel Company Limited, The
Aviation Fuel Services Ltd.
Boral Limited
New Zealand Refining Company Limited, The
South Africa Oil Refinery (Proprietary) Ltd.
Batangas Land Company Inc.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Central African Petroleum Refineries (Private) Ltd.
East African Oil Refineries Limited
H. C. Sleigh Limited
Pakistan Refinery Limited
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage (S.R.E.)

Deutsche Transalpine Olleitung GmbH
Forenade Svenska Oljeimportorers AB
Frevlig A.G.
Gas Natural Colombiano S.A.
Ghana Bunkering Services Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Maghreb Gaz S.A.
Mainline Pipelines Limited
Milan Airport Refueling Services, S.p.A. (MARS)
Mitsui-Texaco Chemicals Co., Ltd.
Montreal Pipe Line Company Limited
N.V. Rotterdam Rijn Pijpleiding Maatschappij
Oberheinische Mineralolwerke G.m.b.H.
Pars Investment Corporation
Pipelines of Puerto Rico, Inc., The
Raffinerie du Sud-Ouest S.A.
Rheem del Ecuador C.A.
Rhein-Mein Rohrleitungstransportgesellschaft mbH
Saudi International Petroleum Carrier Ltd.
Sierra Leone Petroleum Refining Company Limited, The
Skandinaviska Raffinaderi Aktiebolaget Scanraff
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali (SARPOM)
Societe Africaine de Raffinage S.A. (SAR)
Societe Anonyme de la Raffinerie des Antilles (SARA)
Societe D'Entreposage de Bobo-Dioulasso (SEB)
Societe Dakaroise d'Entreposage S.A. (SDE)
Societe d'Entreposage de San Pedro S.A. (SESP)
Societe d'Entreposage Petrolier au Burundi S.A.R.L. (SEP-BURUNDI)
Societe De Manutention Des Carburants Aviation Dakar-Yoff (SMACADY)
Societe Gabonaise de Raffinage (SOGARA)
Societe Gabonaise d'Entreposage de Produits Petroliers S.A. (SGEPP)
Societe Tchadienne d'Entreposage de Produits Petroliers S.A. (STEPP)

Societe Togolaise d'Entreposage S.A. (STE)
Svensk Petroleum Forvaltning Aktiebolag
Tankanlage AG Ruemlang (TAR)
Texaco Mexicana, S.A. de C.V.
Transalpine Finance Holdings S.A.
Transalpine Olleitung in Osterreich GmbH
Trinidad Asphalt Holdings Limited
Trinidad Northern Areas Limited
Trinmar Limited
Trintovac Developments Limited
United Kingdom Oil Pipelines Limited
Unterflur-Betankungsanlage A.G. (UBAG)
West Australian Natural Gas Pty. Limited
Zaire Services des Entreprises Petrolieres (Zaire S.E.P.)
Aktiebolaget Djurgardsberg
Association Petroliere Belge
Aviation Fueling Services, S.A.
Aviation Service Center
Compagnie d'Entreposage Communautaire
Singapore Refining Company Private Limited
Societe Belge de Transport Par Pipeline S.A.
Svensk Petroleumadministration AB
Total Centrafricaine de Gestion
Societe Agricole des Entreprises Petrolieres
Union des Raffineurs Belges
Svensk Petroleumlagring Tre Aktienbolag
Societe Camerounaise des Depots Petroleirs (SCDP)
Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc.
Bergemann KG
Drapol International Limited
Bahrain National Gas Company (B.S.C.)
Farmer Construction Limited
Nippon Oil Staging Terminal Company, Limited
Newscastle Pipeline
Motorway Services Ltd.
Mdina Weave Ltd.